(2012) 04 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8324 of 2012

P. Nagaraju — APPELLANT

Vs

The Revenue Divisional Officer Dharmavaram, Anantapur District. and Thasildar, Chennekothapalli Mandal, Anantapur District. — RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Citation : (2012) 4 ALT 399

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : Kothapalli Ram Mohan Chowdary, for the Appellant;

Final Decision : Allowed

Judgement

Nooty Ramamohana Rao

1. This writ petition is instituted by a fair-price shop dealer of Nagasamudram Village, Chennekothapalli Mandal, Anantapur District, challenging the validity of the orders passed by the Revenue Divisional Officer, Dharmavaram on 18.01.2012 canceling the authorization of the writ petitioner for running and managing the fair-price shop. On 03.09.2011, the Vigilance and Enforcement Authorities, Anantapur conducted a surprise check on the fair-price shop run and managed by the petitioner. Finding a variation in the stock of rice and sugar to the extent of 1.03 quintals and 1.06 quintals respectively, the Tahsildar, C.K. Palli, based on the adverse report, passed orders on 04.09.2011 suspending the authorization of the writ petitioner. When the petitioner appealed against the same, the Revenue Divisional Officer rejected it by his proceedings dated 10.10.2011 and thus confirmed the order of suspension passed by the Tahsildar. Two charges have been framed against the petitioner through the show-cause notice dated 29.12.2011 of the Revenue Divisional Officer, calling for his explanation. The petitioner was directed to attend the hearing on 07.01.2012 in the office of the Revenue Divisional Officer. Accordingly the petitioner attended

the hearing and filed his detailed explanation to the two charges.

2. The first charge relates to the deficiency of stock of the essential commodities lifted by the petitioner. It is stated that the petitioner has lifted rice of a total quantity of 64.98 quintals for the months of September and October, 2011. As per the sales register, he has 0distributed 10.95 quintals only and hence, balance of 54.03 quintals of rice should be there available in the depot. However, there was only 53.00 quintals of rice that is available in the depot. Thus a deficiency of 1.03 quintals of rice was found. Similarly, he was supplied 2 quintals of sugar, of which, he has distributed 19 kgs. Therefore, a balance of 1.81 quintals should have been physically available in the shop. However, what was remaining in the shop was only 75 kgs. Thus, the difference in quantity of sugar was 1.06 quintals. This variation of the stock position of rice and sugar was too steep. The petitioner has challenged the correctness behind this allegation by pointing out that the Vigilance and Enforcement Officers have inspected the fair-price shop when he was not available in the village and that they have not physically weighed the available stock and therefore he disputed the correctness of the statement of allegation. The second allegation relates to non-maintenance of the records properly and consequently he was alleged to have violated condition number 4(1) and 4(11) of the license. The dealer has also disputed this averment that he has not maintained the records properly.

3. However, the Revenue Divisional Officer, Dharmavaram has recorded his findings holding the petitioner guilty of both the allegations based upon the report submitted by the Vigilance and Enforcement Officials. Though this order is an appealable order, the writ petitioner has challenged the correctness of these proceedings in this writ petition essentially for two reasons. One, the Revenue Divisional Officer has not conducted any enquiry and no witnesses have been examined in his presence and merely based upon the report of the Vigilance and Enforcement Officials, the disciplinary action has been finalized by the Revenue Divisional Officer and hence, principles of natural justice are violated in the instant case. Secondly, no reasons are assigned as to why the petitioner can be said to be guilty of the charges.

4. Learned counsel for the petitioner has placed reliance upon several Judgments of this Court including the one rendered by a Division Bench in Ambati Srinivasulu v. District Collector, Nellore 2006 (1) ALD 273

5. The learned Assistant Government Pleader contended that when once certain quantities of essential commodities are made available for a fair-price shop dealer, he should account for the same and his failure results in a disciplinary action against him. Further, the writ petitioner has an effective alternative remedy of appeal and hence this writ petition should be dismissed.

6. It is not in dispute that the writ petitioner was an authorized fair-price shop dealer and his shop premises has been inspected by the Vigilance and Enforcement Officials on 03.09.2011 and they filed an adverse report against the

petitioner. Based thereon, the Tahsildar, C.K. Palli, suspended the authorization of the writ petitioner through his proceedings dated 04.09.2011 and the Revenue Divisional Officer issued a show-cause notice on 29.12.2011 calling for the explanation of the writ petitioner framing two specific charges against him, referred to supra. The show-cause notice directed the petitioner to attend the office of the Revenue Divisional Officer on 07.01.2012 at 11:00 A.M. and file his explanation to the two charges and the petitioner accordingly did. Thereafter, the Revenue Divisional Officer finalized the proceedings and passed the impugned order dated 08.01.2012 holding the petitioner guilty of both the charges.

7. The orders passed by the Revenue Divisional Officer, Dharmavaram, are so plainly unjust and illegal that the failure of the petitioner to prefer an appeal there against will not come in my way of interdicting the same, inasmuch as violation of principles of natural justice is writ large.

8. The Revenue Divisional Officer has noticed clearly that on 04.09.2011 itself, the authorization of the writ petitioner''s fair-price shop has been suspended by the Tahsildar, C.K. Palli. The show-cause notice has further recorded that against the said 2006 (1) ALD 273 suspension order, when an appeal was preferred, the Revenue Divisional Officer rejected the appeal through his proceedings dated 10.10.2011. If this fact is not under serious challenge, what does it reflect? The writ petitioner could not have distributed any essential commodities from 04.09.2011 onwards, whereas, the show-cause notice alleges that the writ petitioner has been supplied with essential commodities for the months of September and October, 2011, of a total quantity of 64.98 quintals of Rice and 2 quintals of Sugar and 206 liters of Palmolin Oil. If the authorization of the writ petitioner is suspended on 03.09.2011, why would the Mandal Level Stockist Point (MLS Point) would supply the stock of essential commodities in the months of September and more particularly, in the month of October, 2011, to a fair-price shop whose authorization is suspended? Unless there is gross negligence on the part of the Tahsildar in discharge of his functions, by allowing authorization orders in favour of the writ petitioner during the months of September and October, 2011 issued any time after 03.09.2011. No fair-price shop dealer can lift the essential commodities from the MLS points without securing an authorization from the Tahsildar concerned. The Tahsildar concerned will not issue the authorization for lifting the stock unless he receives the balance outstanding position of the stock of essential commodities by 25th of every month. Therefore, I am convinced that the Revenue Divisional Officer has not even applied his mind while issuing the show-cause notice on 29.12.2011 when he made an allegation against the petitioner that there was variation noticed between the stock lifted by the petitioner during the months of September and October, 2011 and upon physical verification carried out on 03.09.2011. Even if it is assumed that the stock was lifted by the petitioner truly in the month of October, 2011, such a stock could not have been physically verified by any one on 03.09.2011. The show-cause notice is therefore clearly the result of non-application of mind on the part of the Revenue Divisional Officer.

9. The second charge laid against the petitioner is so vague when it alleges that the petitioner has not maintained the records required to be maintained in the fair-price shop properly. It does not set out as to what are the records that the petitioner has failed to maintain and what is the impropriety noticed in such records. When a vague charge is framed, no person could have answered very effectively such a vague charge. When the petitioner denied the same through the impugned order, a finding is recorded by the Revenue Divisional Officer that the petitioner is guilty of the charge of not maintaining the records properly, without specifying in so many words as to which record he failed to maintain.

10. Clause 5(5) of the Andhra Pradesh State Public Distribution 0ystem (Control) Order, 2008, clearly mandated the appointing authority to frame a definite charge, call for the explanation of the fair-price shop dealer, and only in the event, the explanation was found to be not satisfactory, then, appoint an enquiry officer for conducting enquiry whereat, a fair and reasonable opportunity should be accorded to the petitioner to lead such evidence and material considered necessary and appropriate by him in his defense of the charge or charges and in case the appointing authority is seeking to place reliance upon any adverse report, existing against the fair-price shop dealer, copy of the same be furnished to the fair-price shop dealer and also examine such witnesses as are necessary to bring home the charge laid against the fair-shop dealer. Without going through any of these motions, the authorization of a fair-price shop dealer could not have been cancelled.

11. Principles of natural justice require no person to be condemned without providing a fair and reasonable opportunity to such a person to defend himself adequately and properly. As a part of this concept, one is required to apply ones mind to the defense setup. Non-application of mind is also the worst visible form of abuse or misuse of power. Adherence to principles of natural justice not only tempers the ultimate order with justice but also, adds transparency and gloss to the final order. Natural justice is the name of those principles which constitute the minimum requirement of justice and without adherence to which, justice would be a travesty. Justice ought to be administered in a way which leaves the least doubt to the prying nature of man and which convinces him that justice is being done because it has appeared to him to have been done. Natural justice is, in substance, the procedural side of justice. It is an obligation of the tribunal sitting to decide a case rather than a right of the party to be represented. An orderly procedure is the morale of laws. Natural justice enters into the essence of legal justice because the laws are promulgated to apply to definite persons or things and the orderly manner in which they are to apply, is a pre-requisite of their utility.

12. Similarly, reasons are required to be assigned why the explanation is not found satisfactory. The statement "explanation offered by the dealer is not satisfactory", is a conclusion by itself. As to why the said explanation was not found satisfactory is to be the essential end result of the process of reasoning.

The presence of reasons on record discloses the lines on which the mind has been applied by the adjudicating authority. The requirement to assign reasons has been spelt out long years ago in the following words of Justice Koka Subba Rao (as the learned Chief Justice, then was) in Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI),

"9.............. If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But if reasons for an order are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant consideration, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. ...."

13. In the instant case, the order passed by the Revenue Divisional Officer is clearly and demonstrably without any application of mind on his part. It is only therefore appropriate that this order should be set-aside. Accordingly, the order passed on 18.01.2012 by the Revenue Divisional Officer canceling the authorization of the writ petitioner''s fair-price shop is set-aside, preserving liberty to proceed against the petitioner in accordance with law, as the essential commodities, being heavily subsidized commodities by the State, their misuse, if held established in accordance with law, cannot go unpunished.

14. Every public servant must render himself accountable for what all he did or failed to do, while dealing with the rights of third parties. For sheer non-application of mind by the Revenue Divisional Officer, this writ petition deserves to be allowed with costs quantified at Rs. 1,000/-(Rupees One Thousand Only) payable personally by the Revenue Divisional Officer, Dharmavaram. Fifteen days time is granted to the Revenue Divisional Officer to deposit the costs with the Registrar (Judicial) of this Court and upon such deposit being made by the Revenue Divisional Officer, the costs may be made over by the Registrar (Judicial) by way of account payee cheque sent to the address of the writ petitioner by registered post with acknowledgment due. The writ petition is allowed.

