
(2012) 01 AP CK 0023
In the Andhra Pradesh High Court
Case No : Writ Petition No. 34225 of 2011

P. Nageswara Rao

APPELLANT

Vs

The District Collector, Kurnool District and others

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : AIR 2012 AP 107 : (2012) 2 ALD 382 : (2012) 2 ALT 416

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : P. Narahari Babu, for the Appellant; G.P. for Civil Supplies appearing for respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Noushad Ali

1. This Writ Petition is filed to declare the order of the 2nd Respondent-Revenue Divisional Officer, Nandyal, Kurnool District, passed in Proceedings Rc.No.A.3113/2011, dated 19-12-2011 suspending the fair price shop authorization of the petitioner, pending enquiry, as illegal.

2. The petitioner is a fair price shop dealer of U.Bollavaram Village, Mahanandi Mandal, Kurnool District. On receipt of complaints from the cardholders, the 3rd Respondent-Tahsildar conducted enquiry and submitted a report to the 2nd Respondent-Revenue Divisional Officer that the petitioner was not distributing essential commodities to the cardholders regularly and that he closed the shop during working hours besides failing to remit challan for drawing essential commodities and that the petitioner is working as President of Kurnool District Fishermen Cooperative Society. On a consideration of the said report, the 2nd Respondent initiated proceedings under the Andhra Pradesh State Public Distribution (Control) Order, 2008 and suspended the authorisation pending enquiry. The 2nd Respondent also issued separate show cause notice dated

19-12-2011 seeking explanation of the petitioner for cancellation of the authorization.

3. Heard Sri P.Narahari Babu, learned counsel for the petitioner and the learned Government Pleader for Civil Supplies appearing on behalf of respondents.

4. The learned counsel for the petitioner relying on the fact that suspension order and show cause notice were issued simultaneously, would contend that the impugned order is vitiated being violative of clause (5) of the A.P. State Public Distribution System (Control) Order, 2008 since the same has been passed without waiting for the explanation, thus denying opportunity to the petitioner. He would further submit that the petitioner has not committed the alleged irregularities and that in any event the allegations are not serious so as to warrant suspension. He would therefore contend that the impugned order is liable to be set aside.

5. The learned Government Pleader would however submit that the impugned order is not a final order. The 2nd Respondent is competent to pass an order suspending the authorization pending enquiry. No notice or enquiry is required for exercising the power to keep the authorization under suspension pending enquiry. He would submit that the irregularities noticed are serious in nature and the same will be enquired before final orders are passed. He would therefore contend that issuance of show cause notice and suspension order simultaneously does not vitiate the impugned action.

6. In the light of the above, the questions that arise for consideration are:

Whether a dealer is entitled for notice before suspending an authorization, pending enquiry; and whether the impugned order is vitiated merely because show cause notice is issued simultaneously.

7. In order to appreciate the aforesaid issues, it is required to notice the relevant provisions which are as follows :

Clause 5 (5) of the A.P. State Public Distribution System (Control),
Order, 2008 reads as follows :

(5) The appointing authority may, at any time whether at the request of the authorized fair price shop dealer/nominated retailer/hawker or authorized establishment on suo-motu after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, vary, suspend or cancel the authorization issued or deemed to be issued to him under this clause.

Clause 5 (6) of the A.P. State Public Distribution System (Control), Order, 2008 reads as follows :

(6) The disciplinary authority may, at any time whether at the request of the authorized fair price shop dealer/nominated retailer, hawker or authorized

establishment on suo-motu after making such enquiry as deemed necessary and for the reasons to be recorded in writing, in the interest of public make alternate arrangement i.e. tagging on the house hold supply cards to the nearby fair price shop and also suspend the authorization and/or forfeit the security deposit partly or wholly.

Clause 5 (7) of the A.P. State Public Distribution System (Control), Order, 2008 reads as follows :

(7) Notwithstanding anything contained in sub-clause (4), (5) and (6) above, where a fair price shop dealer/nominated retailer/hawker has been convicted by a Court of law in respect of contravention of any order u/s 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) relating to any of the commodities mentioned in the Schedule to this Order, the appointing authority, shall, by order in writing, cancel his authorization:

Provided that such conviction is set aside in any appeal or revision, the appointing authority may, on application in Form-1 made by the person whose authorization has been cancelled, reissue the authorization to such person :

Provided further that the disciplinary authority viz. Assistant Supply Officer/ Tahsildar concerned shall also exercise the power of suspending the authoritarian of the erring F.P. Shop dealer and tagging on the cards to the nearest F.P. Shop pending final action by the appointing authority, for a period (90) ninety days only. Further action of continuing the suspension beyond (90) ninety days or cancellation of authorization shall be taken by the "appointing authority" as well as the disciplinary authority viz. Revenue Divisional Officers/Sub-Collector/ District Supply Officers.

8. From the aforesaid provisions it is evident that an authorization is liable for suspension or cancellation as the case may be for contravention of the provisions of the Control Order. It is true that the aforesaid clauses do not specifically provide for suspension as an interim measure, but as a corollary, such power is inherent in an authority. Suspension of an authorization as can be deciphered from the Control Order is of two kinds. An order of suspension can be passed by way of punishment in terms of Clause-5 of the Order. Similarly, an order of suspension can also be passed by virtue of its inherent powers temporarily pending enquiry. Suspension pending enquiry into the allegations is interim in nature and does not involve punishment. By such an action the dealership is not put an end to, but the dealer merely ceases to function, keeping his right to deal with the commodities in abeyance. Such orders will cease to exist once an order is passed after an enquiry. An order of suspension pending enquiry does not result either in the cancellation of authorization or the removal of a person from dealership. At this stage when this power is exercised, no conclusive findings need be recorded nor is it possible to do so.

9. Suspension pending enquiry is a step-in-aid to the ultimate action of punishment and it is not an end by itself. An authority at this stage is not even

expected to deal with the matter expressing his mind on the final result or render findings affecting the final outcome. In fact it is desirable that the authority shall refrain from dealing with the matter at this stage as if the proceedings are final.

10. The apex Court while dealing with the constitutional validity of a provision in Punjab Food Grains Dealers Licensing and Price Control Order, 1978 in Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, observed that the power of suspension is a necessary concomitant of the power to grant a privilege or a licence and the power of suspension is a necessary adjunct of the power to grant a licence. In V. Manesham v. State of A.P., (1947) 2 A.P.L.J. 366 a learned Division Bench of this Court while examining the power of licensing authority under Sugar Dealers' Licensing Order held the view that the power of licensing authority to suspend the licences temporarily is very essential to prevent the licensees immediately from further indulging in malpractices in distribution of essential commodities whenever they are noticed. In the absence of any such power to the licensing authorities there will not be any scope for them to ensure the smooth running of the distribution of essential commodities to the general public and that if an authority is entitled to do as expressly authorised it is also entitled to do that which is reasonably incidental to or consequential upon it.

11. Therefore, I hold that at the interim stage of suspension of licence, pending enquiry, neither enquiry need be conducted into the allegations nor a dealer is entitled for notice.

12. As noticed above, Clause 5 (5) apart from enabling suspension of authorization pending enquiry, empowers the appointing authority to cancel or suspend the authorization as a final measure. Such an action can be taken only after ascertaining truth or otherwise of the allegations by conducting an enquiry and such a final order cannot be passed unless the person concerned is provided an opportunity. In that view of the matter, even if show cause notice is issued simultaneously, in order to pass final orders, the same cannot vitiate the interim action.

13. However, it shall be mentioned that keeping an authorization under suspension is not an invariable rule. An authority before suspending an authorization pending enquiry shall apply its mind having due regard to the facts and circumstances of the case. It should be guided by the necessity or otherwise of such an action and the nature of allegations. The authority shall necessarily have due regard to the prima facie case and public interest in mind.

14. A perusal of the order shows that the 2nd Respondent-Revenue Divisional Officer has taken note of the report of the Tahsildar, dated 08-12-2011, who on enquiry found that the petitioner did not distribute essential commodities properly and that he is working as the President of the Cooperative Society. The said allegations prima facie are not trivial in nature as contended by the petitioner. The contention of the petitioner that he has not committed the alleged

irregularities is eminently a question to be addressed by the competent authority at the final disposal of the matter. The petitioner can always participate in the enquiry and establish his case. The impugned order therefore cannot be found fault with.

15. For the foregoing reasons, the Writ Petition is devoid of merits and the same is accordingly dismissed. No costs.

16. Consequently, W.P.M.P.No.42597 of 2011 is dismissed as unnecessary.