
(2011) 11 AP CK 0076
In the Andhra Pradesh High Court
Case No : Writ Petition No. 29296 of 2011

S. Prabhakar Reddy

APPELLANT

Vs

The District Collector Anantapur District, The Revenue
Divisional Officer, Penukonda, Anantapur District and The
Mandal Revenue Officer, Chilamathur Mandal, Anantapur
District

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : (2011) 11 AP CK 0076

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : P. Narahari Babu, for the Appellant;

Final Decision : Dismissed

Judgement

Noushad Ali, J.—Heard Sri P.Narahari Babu, learned counsel for the petitioner and the learned Assistant Government Pleader for Civil Supplies appearing for the respondents 1 to 3.

2. This writ petition has been filed challenging the order of the 3rd respondent-Mandal Revenue Officer (Tahsildar), Chilamathur Mandal, dated 27-10-2011 in Rc.No.362/2011/A2, suspending the petitioner's fair price shop authorization for a period of 90 days pending final action by the competent authority.

3. The petitioner is a temporary fair price shop dealer of Cheruvukindapalli village, Chilamathur Mandal. On a representation of the cardholders, the Civil Supplies Deputy Tahsildars of O.D.Chervu and Tanakal inspected the shop on 24-10-2011 and conducted an enquiry. The inspection revealed certain irregularities committed by the petitioner in the distribution of essential commodities. A report dated 24-10-2011 was filed before the 3rd respondent in that regard. On a consideration of the same, the 3rd respondent passed the impugned order suspending the authorization.

4. The learned counsel for the petitioner submits that the impugned order is not within the competence of the 3rd respondent. It is submitted that the alleged irregularities do not fall within the ambit of Clause 5(7) of the Andhra Pradesh State Public Distribution System (Control) Order, 2009 (for short "the Control Order"). It is his contention that unless a dealer has been convicted by a Court of law in respect of contravention of any Control Order u/s 3 of the Essential Commodities Act, 1955, no action can be taken either for cancellation or suspension of authorization. Since the petitioner has not suffered any conviction, his authorization is not liable for any disciplinary action.

5. I am unable to accept the said contention.

6. Sub-clause 7 of Clause 5 of the Control Order is a non-obstante clause, which has an over-riding effect on the other clauses. It postulates that where a dealer is convicted by a Court of law, his authorization is liable to be cancelled only on the ground of conviction. In cancelling the authorization under this clause no enquiry need be conducted. Mere conviction will give rise to cancellation and an order in that regard by the appointing authority is sufficient. The appointing authority, in such a case, has no discretion except cancelling the authorization. The purport of sub-clause 7 is clear from the first proviso, which says that if conviction is set aside in any appeal or revision, the authorization may have to be reissued on an application made in Form-I.

7. In contrast, clause 5 gives power to the appointing authority to suspend or cancel the authorization, which shall be exercised after an enquiry in the matter. The 2nd proviso to sub-clause 7 again confers power on the Tahsildar to suspend the authorization as an interim measure for a period of 90 days pending final action by the appointing authority. Thus, the 3rd respondent is specifically empowered to suspend authorization subject to the further action that might be taken by the appointing authority/ disciplinary authority.

8. Thus the two sub clauses - sub clauses 7 and 5 - even though authorize the competent authority to cancel authorization, operate in different situations, one on the basis of conviction and the other on the basis of enquiry.

9. Therefore, conviction of a dealer is not a condition precedent for initiation of disciplinary proceedings for cancellation or suspension of an authorization.

10. The learned counsel for the petitioner contends that the alleged irregularities are trivial in nature and the same do not warrant suspension.

11. In order to appreciate the said contention, it is useful to refer to the irregularities said to have been committed by the petitioner, which are as follows:

(1) The F.P.Shop dealer was running the F.P.Shop in Door No.5-75 of Cheruvukindapalli instead of Door No.4-57 mentioned in the authorization by violating condition No.6 of A.P.S.P.D.S. (Control) Order, 2008.

(2) The F.P.Shop dealer has not applied for renewal of authorization within one

month period after expiry of validity with violated Clause 5(10) of the Control Order.

(3) The F.P.Shop dealer was running the F.P.Shop without authorization by violating Clause 6(iii) of the Control Order.

(4) The F.P.Shop dealer has not exhibited stock board and price board and thus contravened Clause 22(v) of the Control Order.

(5) Previously the dealer was suspended on the same allegation and the same allegation repeated by him and thus his authorization is liable for cancellation under Clause 5(1)(B)(iii) of the Control Order.

(6) A quantity of 1.67 Qts of Sugar additionally allotted to the Shop for distribution for Vinayaka Chavithi and Ramjan festivals. The dealer has not distributed the stock and diverted the stock for his ulterior benefits. The cardholders also stated accordingly. Thus the dealer contravened Clause 17(c) of the Control Order.

(7) The dealer is distributing Sugar to the cardholders at the rate of Rs.7-00 for 1/2 kg instead of Rs.6.75 ps. for 1/2 kg fixed by the Government. Thus contravened Clauses 7(i) and 22(iv) of the Control Order.

(8) The F.P.Shop dealer is issuing lesser allotment to following cardholders.

Sl. No.

Card No.

Name of the Cardholder

Commodity

Quantity to be issued

Quantity actually issued

1.

WAP125503300117

P. Fakkiramma

Rice

8 kgs

4 kgs

2.

WAP125503300212

V.Nagaraju

Rice

20 kgs

16 kgs

3.

WAP125503300328

P.Ramu

Rice

16 kgs

12 kgs

4.

WAP125503300175

J.Nanjireddy

Sugar

Not issued for the last 3 months

5.

WAP125503300270

P.Kamalamma

Sugar

Not issued

(9) The F.P.Shop dealer is distributing the essential commodities to the cardholders at his mercy.

12. A perusal of the aforesaid irregularities, more particularly at serial Nos.1, 6, 7 and 8 do not seem to be trivial. A fair price shop, dealer is supposed to conduct business only in the authorized premises and not elsewhere unless he has obtained permission. Similarly, he is under an obligation to distribute all the essential commodities to the cardholders, which the petitioner does not appear to have done. No dealer is authorized to sell the commodities at a price higher than the price fixed by the competent authority nor is he authorized to issue lesser quantities to the cardholders. These are some of the allegations made against the petitioner, which prima facie do not appear to be minor in nature.

13. The learned counsel, however, hastens to contend that the petitioner has not committed the irregularities and therefore, the 3rd respondent is not justified in suspending the authorization.

14. This Court cannot accept the said contention at this stage since it is for the competent authority to decide the matter after holding an enquiry. The petitioner is always at liberty to raise his contentions and defend his case in the enquiry.

15. Even though the impugned order is titled as "Suspension cum Show Cause Notice", a perusal of the order shows that the petitioner has not been called upon to submit any explanation. Therefore, mere title of the order "Suspension cum Show Cause Notice" does not vitiate the order.

16. For the aforesaid reasons, I am of the view that the writ petition is devoid of merits and the same is liable to be dismissed.

17. Accordingly, the writ petition is dismissed, at the stage of admission. No costs.