(2016) 10 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Appeal Nos. 984, 999, 1002, 1003, 1005, 1008, 1010, 1011 & 1016 of 2016

State of Telangana APPELLANT

Vs

P. Padmaja Rani RESPONDENT

Date of Decision : 13-10-2016

Acts Referred:

Citation : (2016) 6 ALT 543

Hon'ble Judges : Ramesh Ranganathan, ACJ. and Sri U. Durga Prasad Rao, J.

Bench : Division Bench

Advocate : Mr. V. Ravi Kiran Rao, Advocate, for the Respondent; G.P. for Civil Supplies (TG), for the Appellant

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, A.C.J. - All these writ appeals are preferred against the common order passed by the learned Single Judge in Writ Petition No. 20084 of 2015 and batch dated 17.7.2015. The respondents in these appeals invoked the jurisdiction of the Learned Single Judge, under Article 226 of the Constitution of India, questioning the action of the Revenue Divisional Officer, Nizamabad in cancelling the authorisation of their fair price shops in Nizamabad Urban Mandal, on the ground that bogus SKS (Samagra Kutumba Survey) numbers were created, starting with ''B'' series instead of ''NZU'' series, in the Electronic Public Distribution site without the District UID (Unique Identification) numbers (Aadhar numbers); and the records of the Food Security Cards were manipulated.

2. Facts, to the extent necessary, are that, on their authorisation being suspended by proceedings dated 30.3.2015, the respondents-writ petitioners invoked the jurisdiction of this Court and, by order in Writ Petition No. 12718 of 2015 and batch dated 28.4.2015, the learned Single Judge, while directing the concerned Revenue Divisional Officers to complete the enquiry within a period of one month from the date of receipt of a copy of the order, held that, if the enquiry was not completed within the stipulated time, the order of suspension

would stand revoked, and the petitioners should be allowed to resume their dealership pending enquiry.

3. Thereafter, the Revenue Divisional Officer issued notices dated 28.5.2015 calling upon the petitioners to show cause against the irregularities allegedly committed by them. The said show cause notice records that the Revenue Divisional Officer, by proceedings dated 12.5.2015, had directed the Tahsildar, Nizamabad to enquire and report on the ten fair price shop dealers of Nizamabad Urban mandal; the Tahsildar, Nizamabad had submitted his report dated 28.5.2015 stating that he had traced out the details of the units which were included in the ''B'' series cards, it was noticed that all Aadhar references belonged to other Districts, there was no option to enter a record in the EDPS data base without SKS survey data, these fair price shop dealers had intentionally done all this with the help of computer known persons, they were not cooperating in the enquiry, and the fair shop dealer was the end beneficiary in the system in cases where the bogus/ghost cards were entered in the dynamic key register.

4. In their reply thereto, by their letter dated 4.6.2015, the petitioners stated that omnibus allegations were made against them of having intentionally committed irregularities with the help of computer known persons; it was the authorities who had the passwords, and nobody else had access thereto; Clause 5(5) of the A.P. State Public Distribution System (Control) Order, 2008 (for short ''the Control Order'') empowered the Revenue Divisional Officer to, among others, cancel the authorisation of a fair price shop dealer; no specific overt acts had been attributed against them in the notice; no provision of the Control Order, or the Essential Commodities Act, 1955, were stated to have been contravened; no enquiry was caused with any card holder; the stocks, pertaining to ''B'' series, were available in their fair price shops; the key register supplied to them by the authorities contained ''B'' series numbers; and no incriminating material was found in respect of their fair price shops to attribute such allegations against them. On receipt of the petitioners'' reply to the show cause notices, the Revenue Divisional Officer passed an order on 8.6.2015 cancelling the authorisation of dealership of the petitioners on the ground that they had contravened Clause 17 of the Control Order questioning which several writ petitions were filed, resulting in the common order under appeal being passed.

5. In the order under appeal, the learned Single Judge held that the order of cancellation violated the judgments of this Court in M. Kalyani v. District Collector, Prakasam, 2006 (5) ALD 796 and Ambati Srinivasulu v. District Collector 2006 (1) ALT 273; apparently no enquiry was conducted before cancelling the authorisation; and no reasons were also assigned for cancelling the authorisations. The impugned orders of cancellation dated 8.6.2015 were set aside giving liberty to the Revenue Divisional Officer to conduct enquiry pursuant to the explanations submitted by the petitioners, and complete the same within three months from the date of receipt of a copy of the order. Aggrieved thereby,

the State of Telangana is in appeal before us.

6. Learned Government Pleader for Civil Supplies would submit that, even if the Revenue Divisional Officer is presumed to lack jurisdiction to direct the Tahsildar to cause an enquiry, the report of the Tahsildar would merely constitute a fact finding report, and nothing more; the Revenue Divisional Officer had acted independently thereof, he had issued show cause notices, he had given the petitioners an opportunity to submit their reply thereto, he had also given them an opportunity of a personal hearing on 4.6.2015, and it is only thereafter that the impugned order dated 8.6.2015 came to be passed; the requirement under Clause 5(5) of the Control Order, and the directions of this Court, for an enquiry to be conducted by the Revenue Divisional Officer had been complied with; and, while the impugned order may not be elaborate, it contains sufficient reasons for cancellation of the authorisation of the petitioners herein.

7. On the other hand, Sri V. Ravi Kiran Rao, learned counsel for the respondents-writ petitioners, would submit that the notice dated 28.5.2015 is not even a notice calling upon the petitioners to show cause why their authorisation should not be cancelled; even otherwise, the said notice specifically refers to the report of the Tahsildar; a copy of the report of the Tahsildar was not furnished to the petitioners herein; both Clause 5(5) of the Control Order and the earlier order of this Court required the Revenue Divisional Officer to conduct an enquiry by himself, and not delegate this exercise to the Tahsildar; an enquiry is an exercise of ascertaining facts; the authorisation of fair price shop dealers cannot be cancelled on vague and baseless allegations; and, in any event, the specific contentions urged by the petitioners, in their reply to the show cause notices, have not been dealt with in the orders impugned in the Writ Petitions.

8. We find considerable force in the submission of Sri V. Ravi Kiran Rao, learned counsel for the respondents-writ petitioners. The notice dated 28.5.2015 makes a specific reference to the 5 enquiry caused by the Tahsildar, and to the report submitted by him on 28.5.2015. While the notice dated 28.05.2015 no doubt directed the petitioners to appear for a personal hearing on 4.6.2015, it neither refers to Clause 17 of the Control Order (which enumerates the penalties for possessing cards, making false entries or diverting stocks etc), nor were the petitioners even informed thereby that their authorisation was liable to be cancelled.

9. Section 5(5) of the Control Order confers power on the appointing authority (in this case, the Revenue Divisional Officer), after making such an enquiry as may be deemed necessary and for reasons to be recorded in writing, to, among others, cancel the authorisation issued to a fair price shop dealer. It is no doubt true that the enquiry, required to be caused in terms of Clause 5(5) of the Control Order, is such as may be deemed necessary by the Revenue Divisional Officer. While the order of this Court, in Writ Petition No. 12718 of 2015 and batch dated 28.4.2015, no doubt required the Revenue Divisional Officer to conduct an enquiry, the manner in which such an enquiry is to be conducted is

neither stipulated in Clause 5(5) of the Control Order nor in the aforesaid order passed by the learned Single Judge.

10. The fact, however, remains that, even in the notice dated 28.5.2015, the Revenue Divisional Officer has referred to and has relied upon the report of the Tahsildar, a copy of which was not even supplied to the petitioners herein. Any action taken against a fair price shop dealer, based on material obtained behind his back and without furnishing such information to him, would violate the rules of natural justice.

11. As noted herein above, in their reply to the show cause notice, the petitioners have specifically stated that the key register issued by the authorities concerned contains ''B'' series numbers. While the learned Government Pleader for Civil Supplies would contend that these ''B'' series numbers were subsequently interpolated in the key register, neither is any such allegation made in the notice dated 28.05.2015 nor has the petitioners'' specific contention in this regard been dealt with in the order dated 8.6.2015. As the very notice dated 28.05.2015, based on which the petitioners'' authorisation was sought to be cancelled, refers to the Tahsildar''s report and the findings recorded therein form the basis for cancellation of the authorisation of the petitioners herein, we find no error in the order of the learned Single Judge necessitating interference in an intra-Court appeal under Clause 15 of the Letters Patent.

12. We, however, find force in the submission of the learned Government Pleader for Civil Supplies that it was open to the Revenue Divisional Officer to take action independent of the report of the Tahsildar. If that be so, the show cause notice ought not to have referred to the Tahsildar''s report nor could the findings therein have been taken into consideration while passing the impugned order. While we see no reason to interfere with the order under appeal, we make it clear that in case the Revenue Divisional Officer desires to take action independent of the report of the Tahsildar, the order under appeal would not preclude him from issuing a show cause notice afresh to the petitioners, afford them an opportunity of submitting their reply thereto, give them an opportunity of a personal hearing and, thereafter, to pass an order afresh in accordance with law. If, on the other hand, the Revenue Divisional Officer intends to place reliance on the report of the Tahsildar, a copy thereof shall be furnished to the petitioners herein. They shall, thereafter, be given an opportunity of submitting their objections thereto, and shall be afforded an opportunity of a personal hearing. It is open to the Revenue Divisional Officer to pass a fresh order thereafter in accordance with law. The entire exercise, culminating in a fresh order being passed by the Revenue Divisional Officer, shall be completed within a period of three months from the date of receipt of a copy of this order.

13. All these writ appeals are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

