

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.6463 OF 2021

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking to declare the action of the 2nd and 3rd respondents in not releasing the essential commodities to the petitioner's Fair Price shop No.9 of Gotukuru village, Kuderu Mandal, Anantapur District to enable the petitioner to distribute the same to the card holders without justifiable reasons as illegal, arbitrary, in violation of principles of natural justice and in violation of Article 14 of the Constitution of India and consequently direct the 3rd respondent to release the essential commodities to supply the same to the card holders attached to the Fair Price shop No.9 of Gotukuru village, Kuderu Mandal, Anantapur District.

2. The case of the petitioner in nutshell is that the petitioner was appointed as permanent Fair Price shop dealer for shop No.9 of Gotukuru village of Kuderu Mandal, Anantapur District on 17.03.2015. Since then, he is distributing the essential commodities to the cardholders without any complaints. In the process of removing the existing dealers particularly in Kuderu Mandal, the officials are adopting their own method to make the allegations against the Fair Price shop dealers and also unauthorizedly authorizing the third parties to distribute the essential commodities. In that process, the 3rd respondent, for the last six months, stopped supply of essential commodities to enable the petitioner to distribute the same to the card holders.

In this regard, consistently every month he is approaching the 2nd and 3rd respondents, however there is no proper reply and thereby, failure of the respondents to supply the essential commodities to the Fair Price shop of the petitioner bearing shop No.9 of Gotukuru village, Kuderu Mandal, Anantapur District is illegal and arbitrary and violative of principles of natural justice.

3. No counter filed.

4. During hearing, the learned Assistant Government Pleader for Civil Supplies would contend that the petitioner himself tendered resignation for shop No.9 of Gotukuru village, Kuderu Mandal, Anantapur District and that the petitioner did not possess valid authorization which was expired on 11.06.2019 and thereafter there was no renewal and consequently the 3rd respondent is not under obligation to supply essential commodities to the petitioner for distribution to the cardholders attached to the shop No.9 of Gotukuru village.

5. During hearing, the learned counsel for the petitioner reiterated his contention and further submitted that without terminating the dealership of the petitioner, failure of the respondents to supply the essential commodities to the shop of the petitioner bearing shop No.9 of Gotukuru village, Kuderu Mandal, Anantapur District is violative of settled law laid down

by the Full Bench of High Court in ***Oleti Tirupathamma Vs District Supply Officer (city) Visakhapatnam and others***¹.

6. Admittedly, the petitioner was appointed as dealer *vide* proceedings in D.Dis.D1CS/703/2015, dated 17.03.2015 as dealer on permanent basis and his authorization was valid up to 11.06.2019. The petitioner submitted an application for renewal *vide* challan, dated 29.05.2019 on payment of Rs.500/- for renewal of authorization. But till date, no order is passed by the concerned respondent renewing the authorization. Therefore, it is clear that no order was passed terminating the dealership of the petitioner by any of the competent authority, but strangely, it is brought to the notice of this Court by the learned Assistant Government Pleader for Civil Supplies an order, dated 18.03.2021 appointing a temporary dealer in the place of the petitioner for the Fair Price shop No.9 of Gotukuru village of Kuderu Mandal. Based on this order, he contended that when temporary dealer is appointed for the Fair Price shop No.9 of Gotukuru village, without impleading him as a party, the petition is not maintainable.

7. As seen from the order placed on record by the learned Assistant Government Pleader for Civil Supplies, there is no mention about the date of termination of the dealership of the petitioner and no details of proceedings terminating the dealership of the petitioner are disclosed. It appears that the order is created for the purpose of defending the respondents

¹ 2002 (1) ALD 577

conveniently after two days of filing this present petition. The respondents, being officials who are discharging their duties are expected to act fairly, but the respondents for different reasons known to them creating such documents even without passing any order of cancellation or termination of the dealership of this petitioner. Therefore, the alleged appointment of temporary dealer has nothing to do with the Writ petition. Even if the temporary appointment is true, it is only for limited purpose of distributing the essential commodities till a regular dealer is appointed.

8. Clause vii & viii of the Revised Guidelines for selection and appointment etc. of Fair Price shop dealers under the Andhra Pradesh State Targeted Public Distribution System (Control) Order, 2018 annexed to G.O.Ms.No.32, Consumer Affairs, Food & Civil Supplies (CS.I) Department, dated 03.12.2018 reads as follows:

vii. When the authorization of a Fair Price Shop dealer / NR is suspended / cancelled or where a F.P. Shop falls vacant, to ensure uninterrupted supply of essential commodities, the cardholders may be requested to draw their commodities from any of the nearby FP shop.

viii. However, if it is not feasible to distribute commodities under portability from the neighbouring F.P. Shop for want of a shop in the same village or for any other reasons, the work of such F.P.Shop may be entrusted to any institution indicated in the NFS Act 2013 purely on temporary basis in order to ensure that there is no hardship to the cardholders in drawing the essential commodities as per their entitlement clearly indicating that such entrustment of distribution on a temporary basis upto three months only shall not confer any

right at the time of filling up of the vacancy on a regular basis.

9. It is clear from Clause vii & viii of the Revised Guidelines referred above, the temporary dealer has no right to claim any relief at the time when the vacancy is being filled up on regular basis. Therefore, the temporary dealer has nothing to do with the proceedings.

10. However, the Apex Court in ***Poonam V.State of Uttar Pradesh & others in Civil Appeal No.6774 of 2015*** made it clear that when a temporary dealer is appointed, he need not be impleaded as a party to the Writ Petition, as he has no right to continue as his appointment is purely temporary.

11. In view of Clause vii & viii of the Revised Guidelines for selection and appointment etc. of Fair Price shop dealers under the Andhra Pradesh State Targeted Public Distribution System (Control) Order, 2018 annexed to G.O.Ms.No.32, Consumer Affairs, Food & Civil Supplies (CS.I) Department, dated 03.12.2018 i.e., and the law declared by the Hon'ble Apex Court, the third party has no right when the respondents intend to fill up the vacancy by regular appointment. Thus, the third party has nothing to do with the proceedings. Therefore, in pursuance of the order, dated 18.03.2021, temporary dealer is not required to be impleaded as a party.

12. Admittedly, the authorization of the petitioner was not renewed and no cancellation order was passed terminating the dealership of this petitioner and in the absence of any order terminating the dealership of this petitioner, the 3rd respondent

is bound to supply the essential commodities to the petitioner's shop to distribute the same to the cardholders allotted to the shop, placing reliance on the Full Bench Judgment of High Court of Judicature for the State of Telangana and for the State of Andhra Pradesh in ***Oleti Tirupathamma Vs District Supply Officer (city) Visakhapatnam and others***, wherein the Full Bench held that :

“such action disabling fair price shop dealer to run the shop without any order of suspension or cancellation is illegal and arbitrary and issued such directions”

13. In view of the law laid down by the Full Bench of the High Court of Judicature for the State of Telangana and the State of Andhra Pradesh, in the absence of any order terminating the dealership of the petitioner, more particularly when the application of the petitioner is pending for renewal of authorization, failure of the respondents to supply the essential commodities to the petitioner's shop to distribute the same to the cardholders allotted to the shop is a grave illegality and in those circumstances, this Court can direct the respondents to supply the essential commodities to the petitioner's shop till his authorization is terminated in accordance with law.

14. One of the major contention of the learned counsel for the respondents is that the petitioner himself tendered resignation, but no such document is placed on record by the learned Assistant Government Pleader for Civil Supplies for verification of this Court, whereas Sri S.D.Gowd, learned counsel for the

petitioner submitted that even if there is any such resignation letter, the signature of the petitioner was forged by the Tahsildar. Since such document is not produced before this Court, the same cannot be accepted.

15. When the petitioner paid challan amount for renewal of the authorization, dated 29.05.2019 and in view of the law declared by the Hon'ble Apex Court and the Full Bench of the High court of Judicature for the State of Telangana and for the State of Andhra Pradesh, the respondents are directed to consider the application of the petitioner for renewal of authorization and pass appropriate orders within four (4) weeks from the date of receipt of order copy. Till then, the respondents are directed to continue to supply the essential commodities to the shop of the petitioner for distribution to the cardholders allotted to the shop bearing No.9 of Gotukuru village, Kuderu Mandal, Anantapur District.

16. With the above direction, the Writ Petition is allowed. There shall be no order as to costs of the Writ Petition.

As a sequel, miscellaneous petitions pending, if any in the Writ Petition, shall also stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 23.03.2021
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