

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**WRIT PETITION NO.12366 OF 2019**

**ORDER:**

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“.....more particularly in the nature of Writ of Mandamus declaring the action of the 3<sup>rd</sup> Respondent in passing Suspension Order vide Ref.No.I(4)/469/2019 dated. 29.06.2019 with regarding to the Petitioner Fair Price Shop No.1135023, Eguva Abbavaram Village, Rayachoty Mandal, YSR Kadapa District as illegal, arbitrary and also violation of Article 21 of the Constitution of India and also against the Provisions of Essential Commodities Act, 1955 and consequently set aside the same.”

The petitioner is appointed as a Fair Price Shop dealer for the Fair Price Shop No.1135023 on regular basis vide Ref.Lr.No.C/390/2008 dated 29.08.2012 for supply of food grains like Rice, Sugar, Dal, Jawari etc., and also Kerosene to the villagers of Eguva Abbavaramvandlapally, Rayachoty Mandal and petitioner distributing the food grains without any remark.

Basing on the report of respondent No.5, the Joint Collector-respondent No.3 suspended the fair price shop dealership of the petitioner without applying his mind and without recording satisfaction. However, a show cause notice dated 29.06.2019 was issued by the respondent No.3 calling upon the petitioner to submit his explanation within three (3) days from the date of receipt of notice. Accordingly, the petitioner submitted his explanation. However, respondent No.3 suspended the dealership of the petitioner based on false allegations. Therefore, the

suspension order is illegal, contrary to the principles of law and requested to set aside the same and issue a direction to the respondents to continue the dealership of the petitioner till the disposal of proceedings under Section 6A of the Essential Commodities Act (for short "E.C.Act").

One of the contentions raised by the petitioner is that variation in various items found by the respondent No.5 during inspection is within permissible limit under clause 29 (a) of A.P. Targeted Public Distribution System (Control) Order 2018 (for short "Control Order 2018"). Therefore, cancellation of dealership during pendency of enquiry under Section 6A of the E.C. Act is illegal. It is also contended that the order passed by the respondent No.3 without issuing any prior notice is against the principles of natural justice and requested to set aside the order Ref.No.I(4)/469/2019 dated 29.06.2019.

During hearing, learned counsel for the petitioner contended that the variation in stock complained against the petitioner is trivial in nature and without recording any specific reason, suspension of dealership is illegal.

Learned Assistant Government Pleader for Civil Supplies supported the impugned order while drawing the attention of this Court to the order dated 29.06.2019 as to recording of satisfaction of respondent as required under Clause 8(4) of the Control Order 2018, and contended that the order does not call for interference.

It is an undisputed fact that the respondent No.5 inspected the Fair Price Shop of the petitioner and found certain variations i.e. shortage of 0.6 kgs of rice and 339.5 liters of kerosene between e-POS machine balance and ground balance. Shortage of 0.6 kgs of

rice is trivial violation, suspension of dealership of the petitioner on the basis of shortage of 0.06 kgs of rice is illegal.

So far as the shortage of 339.5 liters of kerosene is concerned, learned counsel for the petitioner contended that the kerosene was not supplied. Therefore, question of shortage in the stock of kerosene oil does not arise.

As per the material on record, shortage of 339.5 liters of kerosene oil is a grave violation and this Court, at this stage, cannot decide whether such Kerosene was supplied or not when there is a variation between e-POS machine balance and ground balance.

According to clause 8 (4) of the Control Order 2018, the appointing authority may, at any time in the public interest or on suo-motu or on receipt of complaint, after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, suspend or cancel the authorisation issued or deemed to be issued to him/her. Proceedings under Section 6A of the E.C.Act are pending with the respondent No.3 and the respondent No.3 specifically recorded a reason in paragraph No.2 of the impugned order, which is as follows:

“The proposals received vide reference 1<sup>st</sup> read above, have been examined and it is felt that there is a prima facie case of contravention of Control (order) 2018 and therefore, Sri M.Narasimhulu, original F.P.Shop Dealer, Shop No.1183023, Yeguva Abbavaram (vi), Rayachoty Mandal is hereby suspended F.P.shop authorisation pending finalisation of 6-A case U/s 6-A of the E.C.Act, 1955 as per the Control (Order) 2018 with immediate effect.”

In view of the above observation made in the impugned order, I find no illegality in the impugned order to exercise power

under Article 226 of the Constitution of India since it indicates application of mind and recording of reason in compliance of clause 8 (4) of the Control Order 2018. However, the respondent No.3 is directed to complete the enquiry under Section 6A of the E.C. Act as expeditiously as possible, preferably within a period of three (3) months from today.

With the above direction, the writ petition is disposed of. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

22.10.2019  
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