



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3311]

**MONDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

WRIT PETITION NO: 18006/2024

Between:

Smt. Chinna Nagamma,

...PETITIONER

AND

The State of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

Sri.K NARSI REDDY

Counsel for the Respondent(S):

1.GP FOR CIVIL SUPPLIES

The Court made the following:

ORDER:

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

“ ...to issue order or direction more particularly in the nature of Writ of Mandamus declaring the order of the 3rd respondent, dated 19.07.2024 vide Rc.No.K6/436/2023 by confirming the cancellation of authorization of F.P Shop No.1219007 of B.T. Project Village, Gummagatta Mandal, Anantapur district by the respondent No.4 proceedings vide Rc.No.B2/1262/2023, dated 28.07.2023 as illegal, arbitrary, violation of principles of natural justice and violation of articles 14, 19(1)(g) and 21 of the Constitution of India and consequently set aside the above orders passed by the respondents 3 and 4 and consequently direct the respondents to permit the petitioner to run the F.P shop No.1219007 of the B.T Project villave, Gummagatta Mandal, Anantapur District, by supplying essential commodities and pass such other order or orders as the Hon'ble Court may deems fit and proper in the interests of justice.”

2. Heard *Sri K. Narsi Reddy*, learned counsel for the petitioner and the learned Assistant Government Pleader for Civil Supplies appearing for the respondents.

3. The facts, briefly stated, are as follows:

The petitioner was appointed as a fair price shop dealer of B.T. Project village, vide F.P Shop No.1219007, Gummagatta Mandal, Anantapur District. Since the date of appointment, she has been

distributing the commodities to the cardholders without any complaints. While the matter stood thus, basing on the letter of the 5th respondent-Tahasildar, Gummagatta Mandal, dated 25.06.2023, the 4th respondent-The Revenue Divisional Officer, Kalyandurg, Anantapur District, issued the show-cause notice, dated 05.07.2023, to the petitioner alleging that the petitioner had failed to maintain true and correct accounts and thus violated clause 12(p)(3) of the Andhra Pradesh State Targeted Public Distribution System (Control) Order, 2018 (in short, 'the Control Order, 2018') and committed certain irregularities in the distribution of essential commodities.

4. The charges framed against the petitioner are excerpted hereunder:

CHARGE No.1: That the F.P shop dealer has failed to make available schedule commodities physically as per the balances shown in the e-PoS generated prints to crosscheck the variation in stocks. There is excess of 152 Kgs of fortified rice @ 12.44% and 3 packets (each half kg) less of sugar @ 1.44% in the F.P Shop at the time of inspection and contravened the clause 12(p)(3) of A.P.S.T.P.D.S (Control) Order, 2018.

CHARGE No.2: That the F.P Shop dealer was diverted 152 kgs of fortified rice; 3 packets (each half kg) sugar into black market and indulged in clandestine business for her pecuniary gains and contravened the clause 25(d) of the A.P.S.T.P.D.S (Control) Order, 2018.

CHARGE No.3: That the F.P Shop dealer was running F.P Shop without valid license and violated Clause 8(11)(C) of the A.P.S.T.P.D.S (Control) Order, 2018.”

5. The petitioner submitted explanation to the show-cause notice stating as follows:

(a) The charges are baseless and made without proper verification; that the dealer has limited power to distribute the commodities as MDU operator alone is responsible for the distribution and so without making him responsible, issuance of show cause notice is illegal; that the variation in the stocks is within the permissible limit; that the inspecting authorities made table enquiry and without proper verification leveled the charges against the dealer; that the dealer has properly distributed the commodities and has not done any clandestine business; that the dealer has not violated any of the provisions of the Control Order, 2018; and that all the allegations levelled in the charges are technical in nature and do not warrant extreme penalty of suspension.

(b) However, the 4th respondent, without conducting enquiry and even without affording an opportunity of personal hearing to the petitioner and without considering the explanation submitted by the petitioner, cancelled the authorization of the petitioner as per clause 21-C of the Control Order, 2018, *vide* Proceedings Rc.No.B2/1262/2023, dated 28.07.2023. Thereafter, the petitioner preferred an appeal

before the 3rd respondent and the appeal was also dismissed on 19.07.2024 confirming the orders, dated 28.07.2023, of the 4th respondent cancelling the authorization of the petitioner. Hence, this writ petition.

6. The learned counsel for the petitioner submitted that as per Clause 8(4) of the Control Order, 2018, the appointment authority, at any time, in public interest or suo-motu or on receipt of complaint, after conducting necessary enquiry, can suspend or cancel the authorization by giving reasons, however, in the present case, no such enquiry was conducted, but the order was passed by the 4th respondent, basing on the letter of the 5th respondent and the 3rd respondent simply confirmed the orders of the 4th respondent. In support of his submissions, the learned counsel placed reliance on the decision of the High Court of Judicature (for the State of Telangana and the State of Andhra Pradesh) at Hyderabad in **B. Manjula vs. District Collector, Civil Supplies and Ors**¹, wherein it was held as follows:

“9. This Court is conscious of the fact that the law discussed above was laid down by the Courts in the context of disciplinary proceedings against Government servants and it may not be possible to adhere to the same rigors of procedure in an enquiry against a fair price shop dealer. However, this Court is of the considered opinion that since an order of

¹ 2015 (4) ALT 572

cancellation of fair price shop visits the dealer with adverse consequences, the appointing authority must adhere to the fundamental ingredients of an enquiry. The enquiry need not be too elaborate as in the case of a disciplinary proceeding against a Government servant, but it shall follow the basic requirement of an 'enquiry' which in my view must be as described infra.

10. An 'enquiry' pre-supposes an opportunity of personal hearing to the dealer to explain his/her case based on the records such as sales and stock registers. If need be, such 'enquiry' must also include recording the sworn statement of the dealer and witnesses, if any, from his/her side. In cases where either cardholders or other persons sent any complaint, they must also be examined in the presence of the dealer or his/her lawyer and the dealer shall be given an opportunity of cross-examining such persons. The licencing/ disciplinary authority shall also supply to the dealer all the reports on which he is likely to place reliance to the detriment of the dealer. Unless the dealer has no explanation at all to offer, the licensing/disciplinary authority is bound to hold a detailed enquiry.

11. The experience of this Court reveals that the appointing authorities of fair price shop dealers are dispensing with the requirement of making personal enquiry by summoning the dealers. They are merely relying upon the reports sent by their subordinates i.e., Deputy Tahsildars and Tahsildars, behind the back of the dealers and resting their decisions solely upon those reports. This procedure is anathema to the concept of 'enquiry' which otherwise means affording the dealer an opportunity of a fair hearing."

7. The main grievance of the petitioner is that the 4th respondent had straightaway passed orders, without conducting enquiry, only on the basis of the report of the 5th respondent and that the 3rd respondent, without considering the grounds raised by the petitioner and appreciating the material on record in a right perspective, dismissed the appeal. Therefore, the order impugned in this writ petition is illegal, arbitrary being violative of principles of natural justice and therefore, the same is liable to be set aside.

8. On the other hand, the learned Assistant Government Pleader for Civil Supplies, on written instructions, dated 13.08.2024, of the Collector (CS), Anantapuramu, submitted that variation of the stock was found in two commodities, i.e., excess of 1.52 quintals of fortified rice which is 1.74% variation and excess of 3 (half kg) packets of sugar which is 1.5% variation. The variation of fortified rice is beyond the permissible limit, i.e., 1.74%. He further submitted that the fair price shop dealer had run the fair price shop without valid licence and thus, violated clause 8(11)(c) of the Control Order, 2018, and thereby, the appeal was dismissed confirming the cancellation orders.

9. Clauses 12(p)(3) and 21(c) of the Control Order, 2018 read as hereunder:

“12(p) The fair price shop dealer shall:

- (1) xx xx xx
- (2) xx xx xx
- (3) Make available scheduled commodities physically as per the balances shown in the electronic Point of Sale generated prints to cross check the variation (excess/deficit) in stocks.

21. Penalties for possessing cards, making false entries or diverting stock notwithstanding anything contained in this order:-

- (a) xxxx xxxxx
- (b) xxxx xxxxx
- (c) If any fair price shop dealer diverts PDS stock either wholly or partly, the dealer shall be liable for cancellation of authorization besides penalty ten times the difference between the market rate and Targeted Public Distribution System rate of the commodity thus diverted.”

10. In the present case, variation of the stock was found in two commodities, i.e., excess of 1.52 quintals of fortified rice, which is 1.74% variation and excess of 3 (half kg) packets of sugar which is 0.58% variation. As per clause 29(a) of the Control Order, 2018, minor variation in respect of single commodity upto 1.5% may be allowed taking into consideration of transactions one month. The variation of fortified rice alone is beyond the permissible limit, i.e., 1.74%.

11. Further, the petitioner has an effective alternate remedy of filing revision before the District Collector, Ananthapuramu, against the orders passed by the Joint Collector as per clause 24(b) of the Control Order, 2018. The petitioner, without exhausting the remedy available under law, approached this Court. Of course, if there is violation of law, the petitioner can file writ petition as well.

12. The only ground is that the enquiry was not done by examination of witnesses. A fact can be proved not just in one method. If documents prove a fact, it cannot be said that because of no oral evidence, such fact is not proved. The authorities have rightly appreciated the matter in the present case.

13. For all the above reasons, this Court does not see any merit in this writ petition.

14. Accordingly, the Writ Petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

B. S. BHANUMATHI, J

23-09-2024
RAR