

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Writ Petition No.19401 of 2019

ORDER:

This petition is filed under Article 226 of the Constitution of India to issue a Writ of *Mandamus*, questioning the action of the respondents in not allotting essential commodities to the fair price shop held by the petitioner at Gandhi Bazar, Madakasira Village and Mandal, Anantapur District, for the fair price shop No.1259006, without there being any complaint or any suspension of authorization and without following any procedure contemplated under law, and declare the same as illegal, arbitrary and violative of Articles 14, 19(1)(g) of the Constitution of India and violative of A.P. State Targeted Public Distribution System (Control) Order, 2018, and consequently direct the respondents to supply essential commodities to the fair price shop of the petitioner.

The petitioner was appointed as a permanent fair price shop dealer for the fair price shop No.1259006, Gandhi Bazar, Madakasira Village and Mandal, Anantapur District. Since the date of appointment, the petitioner had been distributing essential commodities to the card holders without any complaints. While so, on 05-11-2019 due to recent change of Government in Andhra Pradesh and local political pressure, the revenue officials inspected the shop of petitioner and noted some variation in stock by conducting panchanama. Though the petitioner explained about the variation in stock, the authorities put deaf ear on his submissions. The variation in the stock is minimum and it is due to leakage in loading and unloading. When the petitioner requested to receive demand draft for current month, the 2nd respondent herein issued a show-cause notice to submit his explanation

and passed interim order in respect of stock seized on 05-11-2019. The 2nd respondent issued show-cause a notice in Rc.No.K9/3377/2019, dated 27-11-2019 and there is no suspension till date, but the respondent authorities are not allotting commodities to the petitioner's fair price shop. Therefore, the petitioner requested to pass appropriate order directing the respondents to supply essential commodities to his shop, which is illegal, arbitrary and contrary to the provisions of the Essential Commodities Act, 1955, and requested to issue a direction to the respondents to supply the essential commodities to his fair price shop.

The learned counsel for the petitioner while reiterating the contentions placed reliance on the decision of Division Bench of this Court reported in ***Oleti Tirupathamma vs. District Supply Officer, Visakhapatnam***¹ in support of his contention. On the strength of the same the learned counsel for petitioner requested to issue a direction to the authorities to supply essential commodities to the fair price shop of the petitioner.

Whereas, the learned Government Pleader for Civil Supplies supported the action of the respondents in all respects. No doubt, when the inspection was done by the inspecting authorities, they found certain variations, prepared a mediators report and seized essential commodities from the shop of the petitioner. On account of variation between balance as per e-pos machine and ground balance, proceedings under Section 6-A of Essential Commodities Act are initiated by the Joint Collector, and the said proceedings are still pending as on date.

During pendency of enquiry under Section 6-A of the Essential Commodities Act, no order under clause 8 sub-clause 4 of A.P. Targeted Public Distribution System (Control) Order, 2018 was passed, but still they

¹ 2002 (1) ALD 577 (FB)

are denying to supply essential commodities to the petitioner's fair price shop for distribution of those essential commodities to the card holders.

A similar question came up earlier before the Full Bench of this Court in ***Oleti Tirupathamma Vs. District Supply Officer (City), Visakhapatnam***¹, wherein the Full Bench of this Court had observed as follows:-

"If the licensing authority themselves upon application of mind come to the conclusion that the irregularities committed by the fair price shop dealer would warrant suspension of his licence, it may do so. But, in our considered opinion, the authority without taking recourse to the said action, cannot, refuse to supply the essential commodities. In the event an order of suspension of licence is passed, the authorities will have to make an alternative arrangement. But, in a case of this nature, the card holders would be the worst sufferers in as much their essential commodities would not be supplied to them at all".

Applying the same principle the learned Single Judge of this Court in W.P.No.10396 of 2019 dated 01-08-2019 had issued a direction to deposit the due amount and release the essential commodities to the dealer for distribution through his fair price shop. Needless to emphasize the respondent authorities have the right to take suitable action by following due process of law against the irregularities, if any committed by the petitioner. Hence, by applying these principles laid down by the Full Bench and Single Judge of this Court, it is held that the impugned action of the respondents is illegal and arbitrary, while directing the respondents to supply essential commodities to the petitioner for distribution to the card holders during

¹ 2002 (1) ALD 577 (FB)

pendency of the proceedings under Section 6-A of Essential Commodities Act before the Joint Collector, till passing appropriate order under Clause 8 sub-clause 4 of the Control Order, 2018, after following necessary procedure.

With the above direction, this Writ Petition is disposed of directing the respondents to release essential commodities to the petitioner for distribution till passing any order under Clause 8 (4) of the Control Order, 2018 or final order, whichever is earlier. There shall be no order as to costs.

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

JUSTICE M. SATYANARAYANA MURTHY

Date: 05-12-2019

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