



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE TENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO: 7448 OF 2020

Between:

1. A.Sudharani, W/o. A. Anki Reddy,
Aged about 42 years, Occ. Fair Price Shop Dealer of Shop No.1123011,
Uruturu Village, V.N Palli, Y.S.R District.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh rep., by its Principal Secretary, Civil Supplies Department, Secretariat Buildings, Velagapudi, Guntur District.
2. The Joint Collector, Y.S.R District, Kadapa.
3. The Revenue Divisional Officer, Jammalamadugu Revenue Division, Y.S.R District.
4. The Tahsildar, Verapunayana Palli Mandal, Y.S.R District.
5. The Assistant Civil Supply Officer, Kadapa, Y.S.R District.

...RESPONDENTS

Counsel for the Petitioner(s): V R REDDY KOVVURI

Counsel for the Respondents: GP FOR CIVIL SUPPLIES (AP)

The Court made the following: ORDER



***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ W.P.No.7448 of 2020

% 10-09-2020

A.Sudharani

... Petitioner

Vs.

\$ The State of Andhra Pradesh,
Rep., by its Principal Secretary,
Civil Supplies Department,
Velagapudi, Guntur District and 4 others.

... Respondents

! Counsel for the petitioner: Sri V.R.Reddy Kovvuri

! Counsel for the Respondents: Government Pleader for Civil
Supplies.

< Gist:

> Head Note:

? Cases referred:

¹ 2015 (4) ALT 572

² 2002 (1) ALT 216



HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

W.P.No.7448 of 2020

ORDER:

This writ petition is filed challenging the order dated .01.2020 cancelling the petitioner's authorization as fair price shop dealer.

This Court has heard Sri V.R.Reddy Kovvuri, learned counsel for the petitioner and learned Assistant Government Pleader for Civil Supplies.

Learned counsel for the petitioner challenges the action taken by the respondents on the ground that the cancellation of fair price shop dealership is illegal and incorrect. He argues that in the facts and circumstances of the case, the 2nd respondent should have held a detailed enquiry into the matter and should have passed an order based on the merits of the matter after considering the oral and documentary evidence. He argues that once a show cause is issued and a detailed reply is given, the 2nd respondent was under an obligation to hold an enquiry before passing the order. According to the learned counsel, an enquiry implies a personal hearing, consideration of evidence and thereafter passing the impugned order. He relies upon the judgment of learned single Judge in the case of ***B.Manjula v. District***



Collector, Civil Supplies and others¹. This is the crux of the case and other case laws are also relied upon to show that there are no adequate reasons etc.

Learned Assistant Government Pleader on the other hand argues that this is a case in which explanation was invited. He submits that initially an order of suspension pending enquiry was passed. A learned single Judge of this Court in WP.No.10018 of 2019 directed the petitioner to give an explanation to the show cause notice, treating the suspension order itself a show cause. After the explanation was submitted, the impugned order was passed.

Learned Government Pleader argues that enquiry is not mandatory in every case. It would depend upon the facts and circumstances of each case. He also argues that the order passed is a reasoned order which meets the test of law. As there are serious allegations by the petitioner, learned Assistant Government Pleader argues that the petitioner is not entitled to any relief. Government Pleader also submits that a Mandamus cannot be granted as per the Full Bench in **Oleti Tirupathamma v. District Supply Officer (City), Visakhapatnam and Ors.**² case, if the period of licence expires.

¹ 2015 (4) ALT 572

² 2002 (1) ALT 216



This Court during the course of hearing noticed that the reply to the show cause notice was not filed. The Government Pleader therefore, uploaded the same. Again the matter was reopened and a direction was given to both the learned counsel to explain whether the variations in the stock are within the permissible limit and whether an enquiry was to be held considering the contents of the explanation. The docket orders dated 11.08.2020 and 19.08.2020 bear testimony to this. Additional counter affidavit was filed and thereafter the matter was heard again.

In the case on hand, as can be seen from the sequence of events, the petitioner approached this Court and filed WP.No.10018 of 2019 challenging the proceedings dated 18.07.2019 by which the authorization was suspended. A learned single Judge held that the impugned order should be treated as a show cause notice and a direction was given to the petitioner to submit a reply. Thereafter, the learned single Judge directed respondent No.2 to pass an order on merits. Pursuant to the order of this Court, an explanation was submitted by the petitioner. Thereafter, the impugned order came to be passed. There are three charges which are essentially levied against the petitioner. They are:

- (1) that there are variations.
- (2) lack of authorization.
- (3) lack of display board.



This Court notices that the petitioner had the benefit of legal advice by the time he submitted his explanation. He had approached the High Court and secured an order in WP.No.10018 of 2019. Thereafter, as can be seen, from the copy of the explanation (as uploaded) that it is submitted through a learned counsel.

An explanation is meant to set out the petitioners reply to the allegations made against her. If the petitioner does not traverse the allegations or admits the same, the question is; is an enquiry still necessary?. In the judgment relied upon by the learned counsel for the petitioner in **B.Manjula's** case (1 supra), the learned single Judge held that an enquiry is necessary to be held, and in para 13 it was very clearly held that the enquiry was necessary in order to test the veracity of the explanation offered by the petitioner. Learned single Judge held in its conclusion that the petitioner must be given an opportunity of substantiating her explanation. This is also the settled law. If an explanation is given to the show cause notice denying the material aspects of the allegations, then, the same has to be decided in an enquiry. If, however, the petitioner does not raise a substantial defence denying the material allegations or raise an issue for enquiry, this Court is of the opinion that holding an enquiry is not mandatory in every case. It will depend on the facts and circumstances of each case. In fact, the control order also states that the appointing Officer may and after making such enquiry as may



be deemed necessary, proceed further {8(4) of the Control Order 2018}. Therefore, this Court holds that whether an enquiry is necessary or not would depend upon the allegations made and the exact reply of the fair price shop dealer. In fact if the arguments as advanced are countenanced, a trail will have to be conducted in every matter by the authorities.

In the case on hand, there are three main allegations. The first is in relation to variations. In para 1 of the explanation, the petitioner deals with variations in respect of certain items and in para 1, under the heading explanation, he states that there are no variations. In the additional affidavit filed, an attempt is made to justify the variations by stating that they are within 1.5% variation limit as permitted. Even if this is taken as correct, although it is raised subsequently, the variation in case of sugar is far above 1.5%. Even though kerosene is not an essential commodity, the opening balance is 5 kgs and closing balance is nil. No details of distribution are there. These facts are not stated in the explanation.

The second issue is without the renewal of authorization which had to be done as per condition 8.11 (c) of the control order, 2018, one month before the expiry of the original validity period. It is submitted that the Demand Draft which was taken was not handed over to the respondents. Thus, it is clear that actually there is no denial.



The issue about non-display of the stock cum price board, as per clause 12 (n) of the Control Order, 2018. No explanation is forthcoming in this also.

While it is true that the learned single Judge had in the case of **B.Manjula** (1 supra) held that an enquiry is necessary, this Court is of the opinion that the said decision turns on its own facts. In the case on hand, the explanation submitted by the present petitioner does not raise any substantial issues which require to be tried. In the explanation about the lack of authorisation, it is said a DD was supposedly taken, but it was not handed over to the authorities. No clear details are also furnished of the DD obtained; why it was not handed over etc. This is a mandatory requirement which is not complete. As far as the quantities are concerned, in the original explanation, the 1.5% variation theory which is now advanced has not been put forward. Even if the same is taken into consideration, there is some explanation in the variation in the PDS rice, but not for the sugar. The absence of any explanation for kerosene is also visible. Therefore, this Court holds that in the facts and circumstances of the case and in view of the explanation that is submitted by the petitioner, there was no need to test the veracity of the explanation. As the facts in this case are different, this Court holds that it cannot be said as a matter of rule in every case that an enquiry is mandated. An enquiry is only mandatory when issues are raised which



should merit further investigation into the case. If the petitioner admits that every allegation made or does not refute the same properly holding an enquiry would be an empty formality. Even before regular Courts of law, if the denial is not specific, it is deemed to be an acceptance. This is the doctrine of non-traverse. In matters of this nature, the interpretation cannot be stretched to an extent of mandating a full fledged enquiry in every case. Each case will depend on its facts. Rules of natural justice, which mandate a hearing etc., are not cast in a straight jacket formula. They will depend on the facts. In fact, in the Full Bench decision reported in **Oleti Tirupathamma** (2 supra), a Mandamus was refused as the period of license has also expire. The same is the fact in the present case also.

In that view of the matter, this Court holds that the petitioner is not entitled to any relief. Hence, the writ petition is dismissed. No order as to costs.

As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S.SOMAYAJULU,J

Date: 10.09.2020
Note L.R copy be marked.
KLP