

Darnasi Per Vs. The District Collector (Cs), Prakasam Di

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Court : Andhra Pradesh

Decided On : Jul-02-2015

Judge : Hon?ble Sri Justice G. Chandraiah and Hon?ble Sri Justice Ch

Appellant : Darnasi Per

Respondent : The District Collector (Cs), Prakasam Di

Judgement :

THE HON'BLE MR JUSTICE C.V.NAGARJUNA REDDY Writ Petition No.6119 of 2012 02-07-2015 Darnasi Peraiah Petitioner The District Collector (CS), Prakasam District, Ongole and others Respondents Counsel for the Petitioner:Ms.Shanthi for Sri I.Koti Reddy Counsel for the respondent : AGP for Civil Supplies (AP)6 >Head note: ?.Cases referred:

2015. (3) ALD617THE HONBLE SRI JUSTICE C.V.NAGARJUNA REDDY Writ Petition No.6119 of 2012 Dated 02nd July, 2015 The Court made the following:

ORDER

: This writ petition is filed for a mandamus to set aside proceedings bearing No.RCS/1974/10, dated 09.11.2010, of respondent No.3, proceedings bearing No.Rc.CS2/3898/2010, dated 16.04.2011, of respondent No.2, and proceedings bearing No.Rc.CS2/1309/2011, dated 18.02.2012, of respondent No.1. I have heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Civil Supplies, and also perused the record. The petitioner was the

permanent fair price shop dealer of East Veerayapalem Village, Darsi Mandal, Prakasam District. On 08.10.2010, respondent No.4 has inspected the petitioners fair price shop and submitted his report to respondent No.3. Based on the said report, respondent No.3 has issued show-cause notice vide proceedings bearing No.RCF/1974/2010, dated 18.10.2010, calling upon the petitioner to explain as to why his authorisation shall not be cancelled. The petitioner has submitted his explanation, dated 26.10.2010. Thereafter, respondent No.3 has passed order, dated 09.11.2010, cancelling the petitioners fair price shop authorisation. The said order was confirmed in the appeal and revision by respondent Nos.2 and 1 respectively. The petitioner has, therefore, filed this writ petition assailing these orders. The learned counsel for the petitioner submitted that respondent No.3 has committed a serious illegality in cancelling the petitioners authorisation without there being any evidence whatsoever proving the irregularities alleged against him. She has further submitted that the procedure followed by respondent No.3 is in flagrant violation of the principles of natural justice as he has relied upon the purported statements of certain cardholders made against the petitioner without supplying such statements and giving him the opportunity of confronting them with the statements. She has also submitted that respondent Nos.2 and 1 have mechanically confirmed the order of respondent No.3 without independent application of mind. The learned Assistant Government Pleader for Civil Supplies sought to justify the orders passed by respondent Nos.1 to 3. I have carefully perused the cancellation order passed by respondent No.3, who has framed three Charges against the petitioner, the gist of which is as follows, Charge No.I That as per the report, dated 08.10.2010, of respondent No.4, the petitioner has not been distributing the essential commodities within time and thereby, he is subjecting the cardholders to serious inconvenience. Charge No.II That the report, dated 08.10.2010, of respondent No.4, revealed that the petitioner was transporting 20 bags of rice weighing 50 kgs each in TATA HD four wheeler bearing registration No.AP27 X4033 that the Station House Officer, Darsi has intercepted the vehicle and handed over the same to respondent No.4 and that the driver of the vehicle has informed that the seized stock belongs to the petitioner and thereby, it was confirmed that the petitioner was diverting the PDS rice to black market. Charge No.III That as per the report, dated 08.10.2010, of respondent No.4, some of the

cardholders, who were examined in the presence of the petitioner by the Inspecting Officials, have complained that the petitioner has not been distributing the sugar for the last six months, that he has not distributed 6.93 quintals of PDS rice, 35 kgs of AAY rice, 18 liters of palm oil, 6 kgs of red gram dal and 21 kgs of sugar, that 10.00 quintals of PDS rice seized by the police belongs to the petitioner which was also not distributed to the cardholders and that those stocks were diverted to the black market. The petitioner has submitted a detailed reply to the show- cause notice. As a copy of the reply is not available on file, this Court has summoned the record. I have perused the record, including the show-cause notice and the reply submitted by the petitioner. In reply to Charge No.I, the petitioner has categorically denied that he was not distributing the essential commodities properly and in time. He has asserted that he has not indulged in any irregularities in distribution of the essential commodities and that he has been selling the commodities at the rates prescribed by the Government. For Charge No.II, the petitioner has unequivocally denied seizure of 20 bags of rice along with TATA HD four wheeler bearing registration No.AP27 X4033 from his possession and stated that he is in no way connected with the said rice. He has further stated that his information revealed that the driver of the vehicle is a close relative of one Chenna Reddy, who is a resident of his village, and that at the instance of some of the villagers, the driver has implicated him falsely. The petitioner further stated that for reaching Vinukonda from his village, there is no need to travel through Darsi, where the police have allegedly seized the vehicle, that this fact would show that the driver was transporting the rice by procuring the same from his own source and that in order to escape from his liability, he would have implicated the petitioner. With regard to Charge No.III, the petitioner has explained that the Government has not allotted sugar for the months of June & July, 2010, that for the months of August & September, he submitted the DD for sugar to the extent of the requirement of the cardholders and distributed the same, that some of the cardholders belonging to SC, ST and other categories have left the village for Mysore and other places in connection with tobacco work and that therefore to the extent of the requirement of the remaining cardholders attached to the shop, he has submitted DDs and lifted the sugar and rice. The petitioner further denied the allegation that he has not distributed 6.93 quintals of PDS rice, 35 kgs of AAY rice,

18 liters of palm oil, 6 kgs of red gram dal and 21 kgs of sugar. He has stated that all those persons who have given the statements against him have left the village for Mysore and the women folk belonging to them have received the commodities which was duly recorded in the Sales Register. The petitioner has requested for supply of the alleged statements of the cardholders to enable him to meet the allegations contained therein and submit a detailed explanation. He has also stated that if the records are properly examined, it will be clear that he has not committed any irregularities. That some of the villagers have deliberately sent false complaints against him and as he belongs to SC community, some of the persons belonging to forward cast community have been threatening him as he has declined to run the shop at the place where those people have been residing. The petitioner further explained that he has been running the shop for the last 25 years without blemish and that running of the shop is his only source of livelihood. In his order, respondent No.3 has not rendered any specific finding with regard to Charge Nos.I and II. Under Charge No.III, he has referred to certain purported statements allegedly made by some of the cardholders and arrived at the conclusion that the petitioner has not properly distributed the essential commodities. He has also recorded the finding that the stock of rice which was seized from the vehicle represents the quantities of rice referred to under Charge No.III. On a careful reading of the order of respondent No.3, this Court finds merit in the submission of the learned counsel for the petitioner that neither any semblance of enquiry is held by respondent No.3 nor any iota of evidence was discussed by him to hold that Charge No.III is proved. As noted above, the gravamen of Charge No.III is that as per the statements of the cardholders, the petitioner has not distributed 6.93 quintals of PDS rice, 35 kgs of AAY rice, 18 liters of palm oil, 6 kgs of red gram dal and 21 kgs of sugar. In the first place, respondent No.3 has not referred to the details of the cardholders, who have given the statements. Secondly, it is not specifically alleged in the Charge as to which are the months for which the above-mentioned quantities have not been distributed to the cardholders. An allegation relating to non-distribution of the essential commodities is verifiable only with reference to the record. If the petitioner has not distributed the said commodities, the Sales & Stock Register would not contain corresponding entries. If false entries have been made, it would

be a matter of enquiry as to whether the cardholders or other persons receiving the commodities on behalf of the cardholders have signed or affixed thumb impressions on the Sales Register and whether the signatures or thumb impressions so affixed are genuine or fake. Respondent No.3 has not held any enquiry whatsoever in this direction. Respondent No.3 has not cross checked the alleged statements of the cardholders with reference to the Sales & Stock Register and rendered any finding as to whether the entries therein support the allegations contained in those statements. In the absence of any charge that there are variations between the Stock Register and the physical balance, it is reasonable to presume that the essential commodities are properly distributed by the petitioner. In case of false entries, burden lies on respondent No.3 to prove based on proper evidence that the petitioner is guilty of making such entries. Mere ipsi dixit of some of the cardholders, whose thumb impressions appeared to have been obtained, do not constitute proper evidence to prove the charge. A perusal of the record shows that the names of about 28 cardholders with their card numbers were written on three sheets. The handwriting in respect of each of the cardholders is identical which shows that all this was written by one person. Identical allegations have been mentioned with reference to each cardholder to the effect that for the last three months, the petitioner has not distributed rice, sugar and oil, that he has distributed kerosene and that during the current month, the petitioner has supplied red gram dal and oil. Some thumb impressions were obtained against some names and purported signatures were obtained in respect of other cardholders. Similar statements in the name of some other cardholders were also found in the record. It is also of interest to note that the record contains a common statement of about 20 cardholders, who have deposed in favour of the petitioner, by stating that he has been distributing the essential commodities properly at the prescribed rates and that the PDS rice which was seized along with the vehicle did not belong to the fair price shop run by the petitioner. Curiously, this statement has not been referred in the impugned order. Be that as it may, respondent No.3 has failed to hold even a modicum of enquiry. In *B.Manjula v. District Collector, Civil Supplies and others* , I have discussed the legal requirements for a valid enquiry to be held under the A.P.State Public Distribution System (Control) Order, 2008. I feel it useful to refer to the material part of the judgment hereunder: As per the Oxford

Dictionary Thesaurus, Indian Edition- 2007, meaning of the word 'enquiry' includes probe, examine, explore, delve into. The word 'enquiry' fell for judicial interpretation by the Apex Court in the context of service law jurisprudence. In *State of Uttaranchal Vs. Kharak Singh* ((2008) 8 SCC236, the Supreme Court, inter alia, held that enquiries must be conducted bonafide and care must be taken to see that they do not become empty formalities.

6. In *G.K. Doriaswamy Naidu Vs. State of A.P.* (ILR1967A.P. 904) this Court while considering Section 8 of the A.P. Civil Services (Disciplinary Proceedings) Tribunal Act, 1960 held that the word 'enquiry' covers the hearing of the proceedings i.e., recording evidence, admitting documents and generally complete the record upon which a finding would be based. This view was approved by the Apex Court in *Dr. M.N. Dasanna Vs. State of A.P.* ((1973) 2 SCC378.

7. In *Chandrama Tewari Vs. Union of India* (1987 (Supp) SCC518 the Supreme Court held that the disciplinary enquiry must be held in accordance with the rules in a just and fair manner and that the procedure at the enquiry must be consistent with the principles of natural justice; that the principles of natural justice require that a copy of the document, if any, relied upon against the party charged should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence; that if the findings are recorded against a Government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene the principles of natural justice rendering the enquiry and the consequential order of punishment illegal and void.

8. In *Kondamudi Banerjee Vs. Revenue Divisional Officer, Ongole* (2011 (2) ALD477, I have held at paras 6 and 7 as under: "Indubitably the order cancelling the privilege of distribution of essential commodities through a licence visits the holder of the licence with adverse consequences. Before subjecting the licensee to such an adverse order, it is obligatory on the part of the competent authority to apply his mind to the charges framed against and the explanation offered by the licensee. Failure to follow this fair procedure renders the very purpose of framing

the charges and calling for explanation otiose. The principles of natural justice, it is trite, are embedded in the administrative law field. Whenever an action, which is likely to cause adverse civil consequences is sought to be taken, the person, who is likely to be affected by such action, is entitled to reasonable opportunity of defending himself (See: State of Orissa Vs. Dr. (Miss) Binapani Devi and others - AIR 1967 SC1269 Menaka Gandhi Vs. Union of India - AIR 1978 SC597 Swadeshi Cotton Mills Vs. Union of India - AIR1981S.C. 818 and Rajesh Kumar Vs. Deputy CIT - (2007) 2 SCC181. By failing to consider the explanation of the petitioner with reference to the charges framed against him, respondent No.1 has indulged in serious violation of principles of natural justice. Therefore, the impugned order cannot be sustained in law and is accordingly quashed. This order, however, does not preclude respondent No.1 from considering the petitioner's explanation and passing a speaking order afresh with reference to the charges framed against the petitioner."

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 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 card holders 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. It is trite that mere suspicion cannot take the place of proof and allegations sans evidence do not prove the guilt of a person charged. Respondent No.3 has failed to take into consideration the detailed explanation submitted by the petitioner. His explanation that sugar was not supplied by the Government for the months of June and July, 2010 was not even referred to, leave alone rejected. The further explanation offered by the petitioner that due to exodus of some of the cardholders from the village, he has indented for the essential commodities to meet the requirement of the remaining cardholders in the village is neither referred nor considered. The charge that the stocks of 6.93 quintals of PDS rice, 35 kgs of AAY rice, 18 liters of palm oil, 6 kgs of red gram dal and 21 kgs of sugar were not distributed by the petitioner remained wholly unsubstantiated. The only basis for finding the petitioner guilty of this charge is the purported statements of some of the cardholders and no enquiry was held as to whether the signatures or thumb impressions contained in the Sales Register evidencing receipt of essential commodities belong to the cardholders or their representatives. The petitioners request for furnishing the statements of the cardholders fell on deaf ears. The principles of natural justice require that before relying upon the statements made adverse to the charged person, copies thereof must be supplied to him and he must be given an opportunity of explaining the statements and also confronting the authors of the statements, if so desired by the charged person. This requirement of principles of natural justice is thrown to winds by respondent No.3. The finding that the stocks seized from the vehicle represents the stocks mentioned in Charge No.III was based on mere conjectures and surmises without there being any evidence whatsoever. The alleged uncorroborated statement of the driver of the seized vehicle does not constitute legal evidence to conclude that

the seized stock was allotted to the petitioners shop and was being diverted to black market. Therefore, I have no hesitation to hold that the findings rendered by respondent No.3 are based on his fertile imaginations unsupported by any evidence whatsoever and the procedure followed by respondent No.3 is in utter violation of principles of natural justice, besides the same mocking at fair play. The action of termination of authorisation which deprives the dealer of his livelihood cannot be resorted to without following proper procedure and in the absence of legally admissible evidence proving the misconduct of the dealer. Except certain alleged statements of the cardholders, no evidence to prove the charges made against the petitioner is available in the case. On such mere statements made by certain individual cardholders, it would be highly unjust and iniquitous to cancel the petitioners authorisation. As regards the orders passed by respondent Nos.2 and 1 in the appeal and revision respectively, a careful perusal of these orders would show that they have mechanically confirmed the order of respondent No.3 without independent application of mind. Except stating that respondent No.3 has examined the case with reference to the record and cancelled the petitioners authorisation, no other reasons have been assigned by them for confirming the erroneous order of respondent No.3. For the above-mentioned reasons, the impugned orders are not sustainable in law and they are accordingly set aside. Respondent No.3 is directed to forthwith restore the authorisation of the petitioner and permit him to function as dealer. The writ petition is accordingly allowed with costs of Rs.10,000/- (Rupees ten thousand only). As a sequel to disposal of the writ petition, W.P.M.P.No.7776 of 2012 shall stand disposed of as infructuous.

----- C.V.NAGARJUNA REDDY, J02d July, 2015

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