

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.5164 of 2009

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the order issued by the Joint Collector, Krishna District, Machilipatnam-the 1st respondent herein vide proceedings in E.C.P.No.283/2007 dated 03.06.2008, ordering confiscation of 100% value of the seized stocks under Section 6-B of the Essential Commodities Act (for short, 'the Act').

Heard Sri K. Venkateswarlu, learned counsel for the petitioner and the learned Government Pleader for Civil Supplies for respondents.

The petitioner herein was selected and appointed as a Fair Price Shop Dealer of shop No.8 of Kanur Village, Penamaluru Mandal, Krishna District and he was also given in-charge of shop No.11. The Joint Collector-the 1st respondent herein passed impugned order under Section 6-A of the Essential Commodities Act vide proceedings in E.C.P.No.283/2007 dated 03.06.2008, ordering confiscation of stocks.

Challenging the validity and the legal acceptability of the said order, the present writ petition came to be instituted.

This Court issued Rule Nisi on 16.03.2009. Despite expiry of nearly 6 years, no counter affidavit has been filed by the respondents.

It is contended by the learned counsel for the petitioner herein that without issuing show cause notice and without giving any opportunity of hearing, the 1st respondent herein passed the impugned order, ordering confiscation of stocks and the said action is illegal, arbitrary and violative of Article 14 of the Constitution of India, besides

being opposed to the provisions of the Essential Commodities Act.

On the contrary, the learned Government Pleader for Civil Supplies vehemently contends that the order under challenge is in conformity with the provisions of the statute and there is no illegality nor any material infirmity in the impugned order, as such, the present writ petition is not maintainable and the petitioner is not entitled for any relief under Article 226 of the Constitution of India.

In the above circumstances, now the question that emerges for consideration is whether the order under challenge is sustainable and tenable?

There is absolutely no dispute with regard to reality that the petitioner herein was selected and appointed as a Fair Price Shop Dealer of shop No.8 Kanur Village, Penamaluru Mandal, Krishna District and it is also not in dispute that the petitioner was given in-charge of shop No.11. The Parliament and the State Legislatures make the laws for the purpose of betterment of the society and the authorities functioning under the said legislations are required to adhere to the provisions of the statutes scrupulously and meticulously, and any deviation and breach of the provisions of the statute would render the proceedings invalid.

In the present writ petition, it is the categorical case of the petitioner herein that the 1st respondent herein, without issuing show cause notice and without affording any opportunity to the petitioner, passed the impugned order, ordering confiscation of stocks. The said aspect is not disputed by the respondents by way of filing counter affidavit, as such, the same is required to be treated as admitted.

As per the impugned order of confiscation passed by the 1st respondent herein, a notice under Section 6(B) of the Act was issued to the petitioner on 07.05.2008, to show cause as to why the

seized stocks should not be confiscated to the Government and directed the petitioner to submit his written application within a fortnight from the date of receipt of the notice.

A perusal of the impugned order shows that the matter was heard on 19.05.2008 without waiting for the time fixed in show cause notice. It is in the definite opinion of this Court that the said action is highly arbitrary and cannot be countenanced nor it can be approved by this Court. As per the provisions of the Section 6(B) of the Act, no order confiscating any essential commodity shall be made under Section 6(A) unless a notice in writing is given and opportunity of making representation is afforded.

In the instant case, the provisions of Section 6(B) of the Act were completely given go-by by the 1st respondent herein while passing the order of confiscation of the seized stocks, which, in the considered opinion of this Court, cannot be justified and it is a patent violation of not only the provisions of Section 6(B) of the Act, but also in violation of principles of natural justice.

In view of these circumstances, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned order cannot be sustained in the eye of law and is liable to set aside.

For the aforesaid reasons, the writ petition is allowed, setting aside the order dated 03.06.2008 passed by the Joint Collector, Krishna District, Machilipatnam and the matter is remanded to the Joint Collector-1st respondent herein for fresh consideration after issuing notice and calling for explanation and by giving opportunity of being heard to the petitioner herein, and pass appropriate orders in accordance with law within a period of three months from the date of receipt of copy of this order. No order as to costs.

As a sequel, miscellaneous Petitions, if any, pending shall stand closed.

A.V.SESHA SAI, J

Date: 28.01.2015

ska