

***HON'BLE SRI JUSTICE R.KANTHA RAO**

WRIT PETITION No.5910 of 2015,

WRIT PETITION No.5993of 2015,

WRIT PETITION No.6020 of 2015,

WRIT PETITION No.6127 of 2015,

AND

WRIT PETITION No.6563 of 2015,

-

% Date:07.04.2015

Between:

Sk.Kalesha Vali and four others ...Petitioners

And

\$ The State of A.P. rep. by its Secretary, Civil Supplies Dept.Secretariat,Hyderabad.

...Respondents

! Counsel for petitioners: Sri I.Gopala Reddy

^ Counsel for respondents: Government Pleader for Civil Supplies

< **GIST:**

>HEAD NOTE:

? **Cases referred:**

1. 2006(3) L.S. 191 (D.B.)

2. 2005(2) L.S. 119 (D.B.)

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**TUESDAY THIS THE 7TH DAY OF APRIL
TWO THOUSAND AND FIFTEEN**

PRESENT

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.5910 of 2015,

WRIT PETITION No.5993of 2015,

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Between:

Sk.Kalesha Vali and four others

..... PETITIONERS

And

The State of A.P. rep. by its Secretary, Civil Supplies Dept.Secretariat,Hyderabad.

.....RESPONDENT

The Court made the following:

THE HON'BLE SRI JUSTICE R.KANTHA RAO

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COMMON ORDER:

In all these writ petitions the licences of the respective dealers who are the petitioners herein have been cancelled by the Revenue Divisional Officer by the orders impugned.

2. Against the said orders, the petitioners filed appeals before the Joint Collector and

they are pending.

3. The contention advanced by the learned counsel appearing on behalf of the petitioners is that the authorization of the fair price shops were cancelled without adhering to the procedure relating to the enquiry provided for under A.P. Public Distribution System Control Order, 2001. It is submitted by the learned counsel for the petitioners that even though appeals have been filed, the appellate authority has not been disposing of the appeals and therefore, pending disposal of the appeals before the appellate authority, the order of cancellation of authorization is required to be suspended in these writ petitions. The basis for the argument is that since no enquiry has been held in accordance with the procedure prescribed under the relevant control order, the impugned order has to be suspended.

4. Reliance is placed by the learned counsel for the petitioners on the following judgments:

1. **M.KALYANI v. DISTRICT COLLECTOR, PRAKASAM DISTRICT, ONGOLE AND OTHERS** wherein the Division Bench took the view that where the report of the M.R.O. which formed basis of charges not supplied to the appellant, it vitiates the proceedings due to violation of principles of natural justice and absence of sufficient opportunity to the appellant to defend her case effectively, was not afforded. Simply because appellant submitted her explanation it does not fulfill requirement of reasonable opportunity, more so, when show cause notice would clearly indicate that only basis is report of M.R.O., the authorization of the fair price shop could not have been cancelled on basis of vague notice.

5. In the above case, before the Division Bench, the appeal and the revision filed by the appellant were dismissed and thereafter a writ petition was filed before this Court.

6. Since this Court in the present writ petitions intends to examine the question as to whether pending appeal before the appellate authority, the order of cancellation can

be suspended, the judgment of the Division Bench which was rendered on merits cannot be made applicable to the facts of the present case.

2. **S. MALLA REDDY v. M. VIJAYALAKSHMI AND OTHERS.** *In this case relied on by the learned counsel appearing for the petitioners a show cause notice was issued for suspension pending enquiry, but before conducting enquiry which resulted in passing a final order of cancelling the licence, no show cause notice was issued. The Division Bench set aside the order passed by the R.D.O. cancelling the licence, directed the R.D.O. to issue a fresh show cause notice in accordance with law and to proceed further in the matter and consequently held that the appeal preferred before the Joint Collector was rendered infructuous. For taking the view that the appeal pending before the Joint Collector became infructuous, the Division Bench took into consideration the fact that no show cause notice was issued for cancellation of authorization.*

7. The Division Bench did not specifically pronounce upon the issue as to what is the course open to this Court in respect of passing of any interim order suspending the order of cancellation when the appeal before the Joint Collector is still pending. This issue has been dealt with by the Division Bench of this Court in W.A.No.1346 of 2014.

8. In the above case before the Division Bench, the order of the learned single Judge whereunder a direction was issued to dispose of the revision petition within a prescribed time was issued and pending appeal the impugned order of cancellation was suspended by the learned single Judge. It was contended before the Division Bench by the learned counsel appearing for the appellant that granting interim relief should have been left to the revising authority and the learned single Judge ought not to have granted interim relief suspending the impugned order pending disposal of the appeal by the appellate authority.

9. The Division Bench took the view that giving a direction to dispose of the matter on one hand and granting relief on the other amounts to usurping of the revisional jurisdiction by the learned single Judge and the learned single Judge having directed the revisional authority to dispose of the revision within a stipulated period

ought not to have suspended the impugned order as the said function has to be exercised by the revisional authority before whom the revision is pending. Accordingly, the Division Bench modified the order passed by the learned single Judge to the extent of granting suspension of the impugned order pending disposal of the revision. Therefore, the Division Bench took a specific view that when the revision is pending before the revisional authority, this Court is not supposed to grant any interim orders and in the opinion of the learned Division Bench granting of interim reliefs pending revision amounts to usurping of the revisional jurisdiction. In **S. MALLA REDDY's** case (2nd cited supra) pending appeal before the Joint Collector, the order cancelling the authorization passed by the R.D.O. was set aside by the Division Bench on the ground that the appeal before the Joint Collector became infructuous since no show cause notice was issued for cancellation of the authorization. The finding recorded by the Division Bench in the above case, cannot be made applicable generally in each and every case. A decision was rendered on the ground that no show cause notice was issued for cancellation of authorization. Further, the Division Bench did not lay down any ratio which can be made applicable to the similar cases before this Court generally. Therefore, I am of the view that the decision in the above case rendered by the Division Bench cannot be applied to the facts in the present writ petitions.

10. Moreover, when an alternative remedy of appeal is provided for against an order passed by the Quasi Judicial Authority, the aggrieved party has to prefer an appeal and only in exceptional cases notwithstanding the availability of the remedy of appeal, this Court will exercise jurisdiction under Article 226 of the Constitution of India. But, this Court is not supposed to exercise jurisdiction under Article 226 of the Constitution of India in each and every case, merely because there are some lapses on the part of the Quasi Judicial Authority in following the procedure laid down for conducting enquiry under the respective control order.

11. In all these cases, the petitioners have availed the remedy of appeal and the appeals are pending before the respective Joint Collectors. In view of the ratio laid down by the Division Bench in W.A.No.1346 of 2014 during the pendency of the appeal or revision, this court is not supposed to exercise the jurisdiction by way of suspending the impugned order and the said power has to be exercised by the

revisional or appellate authority, if the revision or appeal is pending before the respective authorities. Therefore, in all these writ petitions, I am not inclined to go into the merits of the case and not inclined to pass any interim order.

12. The writ petitions are accordingly disposed of directing the appellate authority to dispose of the appeals within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Pending miscellaneous petitions, if any, shall stand closed in consequence.

R.KANTHA RAO,J

Date:07.04.2015

Note:

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THE HON'BLE MR JUSTICE R. KANTHA RAO

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