

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.39011 of 2015

ORDER :

This writ petition has been filed challenging the action of the 4th respondent in not granting license to the petitioner as commission agent.

2. The petitioner had a license as commission agent in the 4th respondent-Market Committee from the year 2008. There was an enquiry on certain allegations that the petitioner and other commission agents converted partnership firms into proprietary concerns, on the basis of which, a report was submitted to the 2nd respondent and he in turn addressed a letter dt.18.04.2013 to the 4th respondent not to renew 193 licenses of commission agents until further instructions from the Government.

3. This was questioned by the Commission Agents Association before the 1st respondent on 05.07.2013 and the 1st respondent granted interim relief for continuing business and directed the 2nd respondent to complete the enquiry and submit a final report in order to take further action.

4. Subsequently, a memo dt.21.03.2014 was issued by the 1st respondent passing final order on the appeal filed by the Commission Agents Association after considering the report of the Chief Executive Officer, Ryot Bazar and remarks of the Regional Joint Director, Vijayanagaram directing the 2nd respondent to issue/renew 293 licenses of Commission agents in the agricultural market of Guntur subject to certain conditions specified there under.

5. Basing on the said final order, a memo dt.25.03.2014 was issued by the 2nd respondent permitting the 4th respondent to renew the licenses of commission agents subject to certain conditions specified there under. As per the said circular, the conditions specified in G.O.Ms.No.190 Agriculture and Cooperation (MKTG.I) Department dt.06.04.1994 requiring payment of security deposit for obtaining a

commission agent license has to be followed by the petitioner.

6. Petitioner contends that keeping in view the instructions of the Government in memo dt.21.03.2014 that its license was directed to be cancelled and directions for issuance of fresh license on certain conditions were issued, the 2nd respondent issued show cause notice dt.25.03.2014 for cancellation of the earlier license. Petitioner also contended that on 29.04.2014 4th respondent cancelled the license issued in its favour and the petitioner filed an application on 12.05.2014 for issuance of a fresh license as per the Government order issued on 21.03.2014 in Form-5 enclosing the security deposit of Rs.20,000/- as prescribed in G.O.Ms.No.190, dt.06.04.1994. Petitioner claims that even a notarized affidavit as required by condition No.7 in the Memo dt.25.03.2014 was submitted at the time of submission of application in Form-5.

7. Counsel for the petitioner contends that as per Sub-Rule (5) of Rule 48 of the Rules framed under the A.P. Agriculture Produce and Live Stock Market Act 1966 in the year 1969, an application for grant of license should be disposed of within 45 days from the date of receipt of the application; that if the license is not granted, reasons should be communicated therefor within 45 days as per the said rules; but the petitioner was not given any communication as to whether his application for license was rejected or granted.

8. Petitioner also contended that vide G.O.Ms.No.57 Agriculture and Cooperation (AM-II) Department, dt.12.10.2015, there was a revision of the amount payable as a security deposit by commission agents and the 4th respondent is applying the said G.O. even to the petitioner, though he applied even prior to the issuance of the said G.O.; and its application for grant of commission agent license has to be considered only as per G.O.Ms.No.190 dt.06.04.1994 and not in accordance with G.O.Ms.No.57, dt.12.10.2015.

9. Petitioner placed reliance on the order dt.20.11.2015 in W.P.No.36804 of 2015 and batch wherein this Court had opined that if applications for license or renewal of

license are made before the issuance of G.O.Ms.No.57, dt.12.10.2015, the 4th respondent cannot keep them pending indefinitely and try to apply the new norms for security deposit notified vide G.O.Ms.No.57, dt.12.10.2015.

10. The learned standing counsel for 4th respondent on instructions states that on 06.02.2015, the petitioner was called upon to submit five documents and the petitioner had not submitted those documents and that was why no order was passed.

11. Counsel for the petitioner refuted the above contentions and stated that these documents had also been submitted and copies of the same have also been filed along with this writ petition. He also pointed out that the 4th respondent officials were not in the habit of giving acknowledgments for the documents submitted by the petitioner or other commission agents and now they are trying to take advantage of their own wrong.

12. In view of the above submissions, since there is no explanation from the 4th respondent as to why application for license/renewal submitted by the petitioner on 12.05.2014 was not decided within 45 days period prescribed in Sub-Rule (5) of Rule 48 of the above rules; and since the reason assigned by the 4th respondent that the petitioner had not submitted documents indicated in the notice dt.06.02.2015 *prima facie* does not appear to be correct since copies of the said documents have been filed along with the writ petition affidavit and there was every possibility of the officials of the 4th respondent not acknowledging the receipt of the said documents, I am of the opinion that the 4th respondent is not entitled to treat the petitioners' application as having been made after the issuance of G.O.Ms.No.57,dt.12.10.2015 and to apply the norms specified therein.

13. By order dt.20.11.2015 this Court had already held that application for license/renewal made prior to the issuance of the said G.O. cannot be kept pending indefinitely by the 4th respondent so as to apply the new norms notified in

G.O.Ms.No.57, dt.12.10.2015. That apart, the conduct of the 4th respondent in issuing notice dt.06.02.2015 i.e., nine months after the petitioner had made application for grant of commission agent license, including a provision that if the documents specified therein are not furnished within seven days of receipt of the notice, the license/renewal therefore would be deemed to have rejected, is contrary to Sub-Rule (5) of Rule 48 of the above rules and is clearly arbitrary.

14. Therefore this Writ Petition is allowed; 4th respondent is directed to consider the petitioner's application for grant of commission agent license without reference to the G.O.Ms.No.57 Agriculture and Cooperation (AM-II) Department, dt.12.10.2015, but by applying the norms in G.O.Ms.No.190 Agriculture and Cooperation (MKTG.I) Department dt.06.04.1994 and communicate its decision to the petitioner within two (02) weeks from the date of receipt of a copy of this order. The 4th respondent shall also personally pay costs of Rs.500/- to the petitioner within a period of two (02) weeks from the date of receipt of a copy of this order.

15. Consequently, miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

M.S.RAMACHANDRA RAO, J

02nd December, 2015

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