

HON'BLE SRI JUSTICE R. KANTHA RAO

W.P.No.8770 of 2015

ORDER:

Heard learned counsel appearing for the petitioner and learned Government Pleader for Civil Supplies appearing for respondents 1 to 4.

This Writ Petition is filed seeking to declare the action of the 3rd respondent in canceling the authorization of the petitioner without conducting enquiry, as arbitrary and illegal.

Petitioner is the dealer of fair price shop No.46, 111 Madire Village, Adoni Mandal, Kurnool District. By order dated 9.3.2015, the 3rd respondent cancelled the authorization of the petitioner.

Learned counsel appearing for the petitioner submits that only certain vague and general allegations have been made against the petitioner and based on the report of the Tahsildar, the authorization of the petitioner was cancelled without conducting any enquiry. Learned counsel relied on the decision of this Court in ***M.Anand vs Revenue Divisional Officer, Kurnool***, wherein learned Single Judge took the view that when the authorization was cancelled without examining any card holders and on flimsy grounds, this Court will exercise the powers under Article 226 of the Constitution of India notwithstanding the availability of remedy of appeal to the fair price shop dealer.

There is no dispute about the aforesaid proposition that in very rare and exceptional cases only, this Court can interfere with the order of cancellation in exercise of powers under Article 226 of the Constitution of India. But, this Court in a routine manner is not supposed to exercise jurisdiction under Article 226 of the

Constitution of India on mere ground that the authorization was cancelled without adhering strictly to the procedure. More over, in the instant case, the petitioner availed the remedy of appeal and the same is now pending before the Joint Collector. Further, Division Bench of this Court in WAMP No.343 of 2015 in W.A.No.118 of 2015, held as under:

“On the question of interim relief, stay of operation of the impugned judgment and order has to be granted, as we are prima facie of the view, overruling the contention of the learned counsel for the writ petitioner, the Hon’ble trial judge has no jurisdiction, at the first instance, to substitute his own opinion or decision, in the place of opinion of the authority under the Essential Commodities Act, 1955.

Short fact of the case is that the writ petitioner is a Fair Price Shop Dealer and he was issued a show cause notice on the complaint made by the appellant with regard to misuse of the kerosene oil and we have seen the charges made against the writ petitioner. The writ petitioner has given explanation to the same. As an interim measure, an order of suspension has been issued. The Statute provides power to issue suspension order, pending final decision in the enquiry. According to us, the suspension order was justified, because at the enquiry stage the authority concerned is to examine the prima facie case, meaning thereby, whether there has been any serious allegations against him nor not, and at that stage, the explanation is not required to be looked into. The explanation is required to be examined at the time of final hearing of the enquiry and that is still pending.

Accordingly, we grant stay of operation of the impugned judgment and order of the learned trial Judge. However, we make it clear that the pendency of the appeal will not debar the authority concerned to proceed to dispose of the pending enquiry finally. The observations and findings made in this order, or of the Hon’ble trial Judge in the impugned order, will not be binding or influencing factor. Obviously a speaking order shall be passed. All points are kept open to be agitated by the writ petitioner-respondent.”

Since the appeal is pending before the 2nd respondent-Joint Collector, Kurnool, and having regard to the said order passed by the Division Bench, this Writ Petition is disposed of directing the 2nd respondent to dispose of the appeal, on merits, within a period of eight weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE R. KANTHA RAO

31st March, 2015

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Note: Issue CC by two days.

