HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

Writ Petition No.27009 of 2007

Date: 02-11-2015

Between:

M/s. Sri Sai Srinivas Traders, represented by its
Managing Partner K. Rama Rao, Suryapet,
Nalgonda District and 20 others

.... Petitioners

AND

The Union of India, Ministry of Food and Public
Distribution Department, New Delhi, and 2 others

.... Respondents

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

Writ Petition No.27009 of 2007

ORDER:

No representation on behalf of the respondents. Heard the learned counsel for the petitioner.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring Clause 2 of the proceedings No.151 (2)/2006-PV1, dated 24-04-2007 issued by the 1st respondent fixing the incentive bonus for procurement of paddy retrospectively for the period 01-04-2007 to 24-04-2007 as arbitrary and illegal and violative of Articles 14, 19 (1) (g), 20 (1) and 300 A of the Constitution of India.

A perusal of the material on record would reveal that the issue involved in the writ petition is no longer *res integra* in view of the judgment dated 29-10-2012 passed in W.P.No.25901 of 2007 and batch, wherein this Court dealt with the same and held as under:

"…….There does not appear to be a statutory provision or an instrument having a statutory force creating obligation on the millers to pay over and above the procurement price. However, the responsibility of payment of any such additional amount is assumed by the Union of India for the benefit of farmers under a policy decision. It is for this reason, these amounts are to be first paid by the millers to farmers and the millers are later reimbursed from the funds of the Central Government. However, the policy was not in force from 01-04-2007 to 24-04-2007.

The question, therefore, is whether the policy could have been extended by the Central Government retrospectively with effect from 01-04-2007 and imposed obligation on the petitioners to pay bonus with retrospective effect.

There cannot be any dispute that application of the policy under the impugned order has imposed fiscal liability on the petitioners with retrospective effect and their failure to discharge the liability for the past transactions would attract penal provisions for contravention of Clause 12 of the Control Order read with Section 7 of the Essential Commodities Act, 1955. It is a settled proposition of law that no person shall be subjected to penal proceedings with retrospective effect on the basis of law subsequently enacted. Thus, I am of the considered view that the impugned order of the Union of India, dated 24-04-2007 to the extent of its application retrospectively from 01-04-2007 to 24-04-2007 is not legal and sustainable and as such the consequential notices dated 15-11-2007 issued by the District Collector directing the petitioners to pay the amounts are not sustainable.

…….There cannot be any dispute that if the petitioners had purchased paddy from 01-04-2007 to 24-04-2007 and supplied the resultant rice to the Food Corporation of India and received bonus amount from it towards such supplies, the petitioners are liable to transmit the same to the petitioners. I am of the opinion that this is a question of fact and the same requires on enquiry before fastening liability on the petitioners.

Hence, I deem it appropriate that the concerned Enforcement Officer under the Control Order shall conduct an enquiry into the matter after due notice to the petitioners and the Food Corporation of India as well, and determine whether any bonus amounts were paid to the petitioners for the period from 01-04-2007 to 24-04-2007 and if it is found that any such payments were made, then the petitioners shall be directed to transmit the same to the farmers from whom they had purchased paddy. Such enquiry shall be completed within a period of four months from the date of receipt of a copy of the order."

In view of the order dated 29-10-2012 passed in W.P.No.25901 of 2007 and batch, which has become final, the writ petition is disposed of in terms of the said order, holding that the concerned Enforcement Officer under the Control Order shall conduct an enquiry into the matter after due notice to the petitioners and the Food Corporation of India as well, and determine whether any bonus amounts were paid to the petitioners for the period from 01-04-2007 to 24-04-2007 and if it is found that any such payments were made, then the petitioners shall be directed to transmit the same to the farmers from whom they had purchased paddy. Such enquiry shall be completed within a period of four months from the date of receipt of a copy of the order. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

Date: 02-11-2015

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