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

W.P.No.3972 of 2006

ORDER:

The conduct of the respondent in this Writ Petition is a typical example of intentional and deliberate failure on the part of a subordinate authority in adhering to the orders of a statutory quasi judicial appellate authority. The Parliament and the State Legislatures make the laws for the purpose of betterment of the system and there is a sacred obligation on the authorities to implement the provisions of the statutes in their true letter and spirit. The conduct of the authorities in functioning and discharging under the statutes should be in the direction of creating, inspiring and strengthening the confidence of the people in our holy democratic system of governance and must not be in the way of frustrating the intention behind the legislations.

2. The challenge in the present Writ Petition is to the inaction on the part of the respondent-Revenue Divisional Officer, in implementing the orders of the Joint Collector, whereby and whereunder the Joint Collector while remanding the matter for fresh consideration, kept the orders of the Revenue Divisional Officer in abeyance.

3. This Court on 17.7.2006 issued rule nisi and responding to the same, the respondent filed counter, contending *inter alia* that after the remand ordered by the Joint Collector vide order dated 15.3.2000, the Revenue Divisional Officer, after issuing show cause notice, passed order on 27.8.2005, cancelling the authorization of the petitioner.

4. Heard the learned counsel for the petitioner Sri K.S.Murthy and the learned Government Pleader for Civil Supplies for Respondent, apart from perusing the material on record.

5. It is contended by the learned counsel for the petitioner that the

action of the respondent is arbitrary, illegal and unreasonable and violative of Articles 14 and 21 of the Constitution of India and the provisions of the Essential Commodities Act and Public Distribution Order. It is further submitted that neither a show cause notice nor the order of cancellation was communicated to the petitioner and the same are void as *non est* in the eye of law. It is further contended by the learned counsel that this high handed action on the part of the respondent authorities cannot be approved.

6. On the contrary, it is contended by the learned Government Pleader that there is no infraction of statutory or constitutional right, as such the Writ Petition is not maintainable and the petitioner is not entitled for any relief under Article 226 of the Constitution of India. It is contended that having suffered an order of cancellation of authorization and having failed to assail the said order by filing appeal, it is not open for the petitioner to further prosecute the Writ Petition. It is the further contention of the learned Government Pleader that after issuing show cause notice dated 6.11.2004 and after giving opportunity on a number of occasions, the authorization of the petitioner was cancelled vide proceedings dated 27.8.2005.

7. In the above background, now this Court is called upon to examine as to whether the justification offered by the respondent is reasonable and whether the petitioner is entitled for the relief from this Court under Article 226 of the Constitution of India?

8. The information available before this Court manifestly discloses that as against the orders of cancellation of fair price shop authorization passed by the Revenue Divisional Officer vide proceedings D.Dis.No.3132/97/A dated 22.8.1999, an appeal was preferred before the Joint Collector, Visakhapatnam and the Joint Collector, after considering the various aspects of the issue passed an order and the operative portion of the said order reads as under:

> "I therefore remand the matter to the Revenue Divisional Officer, Visakhapatnam for fresh and detailed enquiry and to take appropriate further action as per the procedure until such time the orders of the Revenue Divisional Officer, Visakhapatnam shall be kept in abeyance".

9. While referring to the said order passed by the Joint Collector on 15.3.2000, it is the contention of the learned counsel for the petitioner that the Revenue Divisional Officer should have restored the authorization pending consideration of the issue. As per the counter, the justification sought to be offered by the respondent is that the copy of the order passed by the Joint Collector dated 15.3.2000 was received by the office of the Revenue Divisional Officer after one and half years, as such the said orders did become infructuous. The said justification, in the definite and considered opinion of this Court is not only unreasonable, but also preposterous and reprehensible and cannot be countenanced and it tantamounts to an action in defiance of the orders of the statutory appellate quasi judicial authority.

10. Yet another defence sought to be pressed into service by the respondent is that after the orders of the Joint Collector on 15.3.2000, the Revenue Divisional Officer, after issuing show cause notice passed order dated 27.8.2005, cancelling the authorization of the petitioner. On the contrary, it is the specific and categoric contention of the petitioner that after remand by the Joint Collector by virtue of orders dated 15.3.2000, the Revenue Divisional Officer has neither served any show cause notice nor communicated the order of cancellation alleged to have been passed on 27.8.2005.

11. In order to ascertain the ground realities, this Court called for the connected records from the office of the Revenue Divisional Officer and in terms of the same, the record has been made available before this Court by the learned Government Pleader today. The record so produced contains the show cause notice dated 6.11.2004 and also

the orders of cancellation issued vide proceedings dated 27.8.2005. A perusal of the said record candidly shows that the respondent herein did not choose to serve the said show cause notice nor had taken any steps to serve the orders of cancellation of authorization. In other words, the record so produced makes very much manifest that without issuing any show cause notice and without giving any opportunity of being heard to the petitioner, the Revenue Divisional Officer passed the order of cancellation of authorization on 27.8.2005. This action on the part of the Revenue Divisional Officer cannot be approved and the same is highly arbitrary and illegal. In the considered opinion of this Court, the order of cancellation dated 27.8.2005 contained in the record is inoperative and *non est* in the eye of law and this Court cannot remain as a silent spectator for the same and the high handed action and attitude of the respondent herein cannot be approved. Accordingly, the order of cancellation is declared as inoperative, invalid and *non est* in the eye of law. There is absolutely no justification on the part of the Revenue Divisional Officer in not giving effect to the orders of the Joint Collector dated 15.3.2000, according to which, the Revenue Divisional Officer should have restored the authorization of the petitioner pending consideration of the issue.

11. For the foregoing reasons and taking into consideration of the totality of the circumstances, the Writ Petition is allowed, directing the Respondent herein to restore the authorization of the petitioner forthwith. It is also made clear that it is open for the respondent-Revenue Divisional Officer to take action, in accordance with law, into the allegations made against the petitioner, after giving show cause notice and after affording opportunity of being heard. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 9.3.2015
DA

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W.P.No.3972 of 2006

Date : 9.3.2015

Between:

P.Trinadha Rao

… Petitioner

and

The Revenue Divisional Officer,
Visakhapatnam.

… Respondent