

HON'BLE SRI JUSTICE R. KANTHA RAO

W.P.No.2534 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 suspending the authorization of the petitioner *vide* order dated 28.01.2015, as arbitrary and illegal.

The petitioner was appointed as dealer of fair price shop No.28, Subba Reddy Street, Rayachoty Town and Mandal, YSR District, on regular basis. While so, the Inspector, Vigilance, Kadapa, inspected the fair price shop of the petitioner, found variation of 197 liters of kerosene oil and at that time, the petitioner was absent.

According to the respondents, when questioned by the officials, one J.Giridhar, who was present at the time of inspection, stated that he was binami to the fair price shop of the petitioner. The said question has to be established in the regular enquiry conducted by the Revenue Divisional Officer.

On the aforesaid grounds, the 3rd respondent-Revenue Divisional Officer, Kadapa, suspended the authorization of the petitioner.

Learned counsel appearing for the petitioner submits that due to the temporary absence of the petitioner, the said Giridhar was present at the fair price shop and he is not a benami and therefore, the 3rd respondent ought not to have suspended the petitioner's authorization. Learned counsel placed reliance on the order of this Court in **K.Nirmala v. Revenue Divisional Officer, Ananthapur District and another**^[1], wherein learned Single Judge took the view that the order passed on trivial and flimsy grounds rejecting stay application without assigning any reasons cannot be sustained.

The said judgment is not applicable to the case on hand as in this present case, the vigilance officials noticed variation of 197 litres of kerosene, which is not within the permissible limits.

Learned counsel further relied on the order of this Court in **M.Saritha v. Government of Andhra Pradesh and others**^[2], wherein learned Judge took the view that temporary absence of the fair price shop dealer cannot be a ground for suspending his authorization.

In the instant case, the authorization was cancelled not only on the ground that a benami dealer was running the fair price shop but also on noticing

shortage of 197 litres of kerosene. Therefore, the said judgment is also not applicable to the facts of the present case.

In this context, it is necessary to refer the order of Division Bench of this Court in WAMP No.343 of 2015 in WA No.118 of 2015, wherein it is 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.”

Having regard to the principles laid down by the Division Bench of this Court, this Court is of the view that the alleged variation of 197 litres of kerosene is not trivial and not within the permissible limits. More over, the suspension order was passed pending enquiry.

Under these circumstances, the 3rd respondent-Revenue Divisional Officer, Kadapa, is directed to complete the enquiry within a period of two months from the date of receipt of a copy of this order, failing which the order of suspension shall stand revoked.

Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

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

JUSTICE R. KANTHA RAO

9th March, 2015
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[\[1\]](#) 2012(6) ALD 723

[\[2\]](#) 2012(3) ALD 491