

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION No.31366 of 2012

-

Between:

Smt. Kantipamu Krishnaveni

...Petitioner

and

The District Collector, Visakhapatnam and others

...Respondents

DATE OF JUDGMENT PRONOUNCED: 15.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

-

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment
may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to

see the fair copy of the Judgment? Yes/No

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.31366 of 2012

-

ORDER:

This Writ Petition is filed for a Certiorari to quash proceedings in R.P.No.8/2012/CSR7, dated 08.08.2012 of respondent No.1, confirming the order in A.C.No.10/2010/CSR7, dated 31.03.2012 of respondent No.2.

Despite service of notice on respondent No.4, no one entered appearance on her behalf.

I have heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Civil Supplies (AP) besides perusing the record.

The petitioner averred that she is a resident of Cherlopalem Village, Nathavaram Mandal, Visakhapatnam District. In pursuance of the notification issued

by respondent No.3, the petitioner has applied for grant of fair price shop authorization in respect of Cherlopalem Village, Nathavaram Mandal. Respondent No.4 is also one such applicant. That respondent No.3 having found the petitioner more meritorious than respondent No.4, appointed the petitioner as permanent fair price shop dealer vide his proceedings bearing Rc.No.134/2010/C, dated 20.03.2010. Feeling aggrieved by the said order, respondent No.4 has filed an appeal before respondent No.2 on 22.05.2010. The petitioner has filed a counter-affidavit wherein she has inter *alia* raised an objection to the maintainability of the appeal as it is not filed within 30 days, prescribed as limitation for filing such appeal. Respondent No.2 has however, not only entertained the appeal but also allowed the same and set aside the order of respondent No.3 and remanded the case to the said respondent with a direction to him to inquire into the allegation of sanction of loan in favour of the petitioner under Rajeev Yuva Sakthi and pass a fresh order.

In ground No.7 of grounds of appeal before respondent No.2, respondent No.4 has pleaded as under:

“The Learned Revenue Divisional Officer failed to supply copy of the order dt. 20.3.2010 to the Appellant in spite of her best efforts and he avoided to issue the said order purposefully. As a result, the Appellant could not prefer any Appeal immediately after passing the order on 20.3.2010. The Appellant was forced to invoke provision of Right to Information Act and could obtain the said order copy only on 19.5.2010. Meanwhile, the first Respondent had made his best efforts to entrust the F.P. Shop to the Second Respondent clandestinely, which is against the sound principles of Law. Non supply of the order to the aggrieved party is a serious offence under the guidelines of Civil Supplies Department and on that ground also, the appointment of Smt. Kantipamu Krishnaveni is liable to be set aside.”

Dealing with the point as to whether the appeal is maintainable as it is time-barred, respondent No.2 held as under:

“During the arguments, the appellant has stated that the order copy was not served on him; as such he could not file appeal within

statutory period. The said appeal was filed only after obtaining a copy of the order under Right to Information Act from the office of the Revenue Divisional Officer, Narsipatnam on 18.5.2010, and filed appeal on 22.5.2011.

Now the point to be examined is that the limitation in delay can be condoned or not as per Section 5 of the Limitation Act, 1963, appeals filed under Section 6C of ECAct 1955 and also the appeals provided under the orders which are promulgated under Section 3 of the said Act. In cases where application for condoning the delay were not filed a time of one month from the date of receipt of the order shall be dealt with as to whether there was plausible explanation or cause for delay, then the said delay may be condoned.

In the instant case, the appellant has explained that she was not provided with the copy of the order within time by the Revenue Divisional Officer, Narsipatnam and after obtaining the order copy under Right to Information Act on 19.5.2010 and filed this appeal on 22.5.2010. Having examined the issue in detail and considering the circumstances under which the delay in filing this appeal was taken condoning the delay this appeal is taken on file.”

Dealing with a similar situation, this Court in **AKULA VEERIAH v. COMMISSIONER OF CIVIL SUPPLIES** held that under the Andhra Pradesh State Public Distribution System (Control) Order, 2001, the revisional authority is not empowered to condone the delay in filing revision and that the said authority, not being a civil Court, the provisions of Section 5 of the Limitation Act, 1963 have no application. In so holding, this Court has placed reliance on the judgments of the Supreme Court in **CCE AND CUSTOMS v. HONGO INDIA (P) LTD** and **CHATTISGARH STATE ELECTRICITY BOARD v. CENTRAL ELECTRICITY REGULATORY COMMISSION**.

In the light of the above settled legal position, the premise, on which respondent No.2 has condoned the delay, namely, that he can examine whether there was plausible explanation for cause of delay and on being satisfied with the existence of such plausible explanation, delay can be condoned, is not sustainable

in law.

The further question that needs to be considered in this Writ Petition is whether the stand taken by respondent No.4 that she was disabled from filing appeal within the period of limitation as respondent No.3 failed to supply the copy of the order in spite of efforts, was correct or not. The necessity for this Court to examine this aspect arises for the reason that if respondent No.4 proves this allegation, the limitation may start running from the date on which the copy of the order was furnished to her. For this purpose, I have summoned and perused the record.

From a perusal of the record, it is evident that for the first time on 10.05.2015, respondent No.4 has submitted an application under Right to Information Act, 2005. In her application, which is in vernacular language (Telugu), respondent No.4 has stated as under:

In the month of March, interviews were held for running fair price shop and she may be furnished with the applications filed by herself and the petitioner and the order passed therein.

At the hearing, the learned Assistant Government Pleader for Civil Supplies fairly stated that except the said application, respondent No.4 has not submitted any representation earlier in point of time requesting for furnishing a copy of the order. Even in the application, dated 10.05.2015 submitted by respondent No.4, there is no whisper of her approaching respondent No.3 and the latter avoiding furnishing a copy of the order. Thus, for the first time before respondent No.2, respondent No.4 has levelled a serious allegation against respondent No.3 that in spite of her best efforts, respondent No.3 has avoided issue of copy of the order purposely. Respondent No.4 has failed to not only substantiate this allegation but also to prove that she has approached respondent No.3 earlier than 10.05.2010 for supply of a copy of the order, dated 20.03.2010. These facts thus clearly reveal that for the first time, respondent No.4 approached respondent No.3 for supply of a copy of the order, dated 20.03.2010, 50 days after passing of such order. The limitation for filing appeal is only 30 days. Thus, respondent No.4 has submitted her application for

furnishing a copy of the order much after expiry of the period of limitation. Accordingly, it needs to be held that the appeal filed by respondent No.4 was barred by limitation and respondent No.2 had no authority to condone the delay in filing the appeal.

In the light of the above facts and circumstances, the Writ Petition is allowed and the orders of respondent Nos.2 and 1 passed in the appeal and the revision respectively are quashed.

As a sequel to disposal of writ petition, WPMP.No.40002 of 2012 filed by the petitioner for interim relief is disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

15th JULY, 2015.

Note: L.R. Copies to be marked.

kvni