

HON'BLE SRI JUSTICE R. KANTHA RAO

W.P.No.6179 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 2nd respondent in not passing orders either in the stay application or in the appeal, which was filed challenging the order of suspension passed by the 3rd respondent *vide* order dated 5.2.2015, as arbitrary and illegal.

The petitioner is the permanent dealer of fair price shop No.27, Mogullapalli Village, Yarragondapalem Mandal, Prakasam District. While so, on 27.09.2014, the Assistant Supply Officer, & Enforcement Deputy Tahasildar, Yerragondapalem, and Food Inspector, Markapuram, inspected the fair price shop of the petitioner, noticed certain irregularities and found variations in the stock. On 15.10.2014, show cause notice was issued to the petitioner, for which, he submitted his explanation. Thereafter, *vide* order dated 5.2.2015, the 3rd respondent suspended the authorization of the petitioner. Challenging the same,

the petitioner preferred appeal along with the stay application before the 2nd respondent, but so far no orders have been passed.

Learned counsel appearing for the petitioner submits that it is not known whether the impugned order is final order or suspension order, pending enquiry.

A perusal of the impugned order goes to show that the impugned order was passed suspending the authorization of the petitioner pending enquiry. It is not the case of the petitioner that the order of suspension was passed without any basis. An order of suspension can also be passed after receiving the explanation from the fair price shop dealer, pursuant to the show cause notice issued to him. While examining the suspension order, which was passed pending enquiry, this Court cannot make a roving enquiry into the reasons for the order of suspension. It is enough, if a *prima facie* case is made out against the fair price shop dealer warranting suspension.

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."

Under these circumstances, the Writ Petition is disposed of directing the 3rd respondent-Revenue Divisional Officer, Markapuram, to conduct enquiry and pass final order within a period of two months from the date of receipt of a copy of this order, notwithstanding the pendency of the appeal before the 2nd respondent-Joint Collector, Ongole. However, it is made clear that if no final order is passed within the aforementioned

period, the order of suspension shall stand revoked.

There shall be no order as to costs.

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

JUSTICE R. KANTHA RAO

11th March, 2015

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