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HON'BLE SRI JUSTICE A.V.SESHA SAI
WRIT PETITION No. 26683 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, challenges the order dated 30.04.2008 passed by the Joint Collector & Additional District Magistrate, Guntur/first respondent herein allowing the appeal filed by the respondents 4 and 5 herein.

2. Heard Sri D.Krishna Murthy, learned counsel for the petitioner, learned Government Pleader for Civil Supplies for the respondents 1 to 3 and Sri M.Prabhakar Rao, learned counsel for the respondents 4 and 5 apart from perusing the material available on record.

3. Petitioner herein is a Fair Price Shop dealer of Potluru village, Savalyapuram Mandal, Guntur District and he was appointed as such in the year 1987. The Revenue Divisional Officer, Narsaraopet on 11.02.2003, cancelled the Fair Price Shop authorization of the petitioner and assailing the said order of cancellation, petitioner filed appeal before the

Joint Collector, Guntur District/first respondent herein and the same ended in dismissal on 07.10.2004. Thereafter, petitioner filed a revision before the Collector, Guntur and the District Collector also dismissed the said revision, confirming the order of cancellation. The official respondents herein also launched criminal prosecution against the petitioner herein for the offence alleged under Section 409 I.P.C and vide judgment in C.C.No.97/2003 on the file of the Munsif magistraste, Vinukonda, petitioner was acquitted. Petitioner filed W.P.No.11790/2006 before this Court, challenging the orders of the Collector in Revision Case No.3/2005-S7 dated 25.08.2005 confirming the orders of cancellation. By way of an order dated 08.12.2006, this Court allowed the said writ petition setting aside the orders of cancellation as confirmed by the Joint Collector and District Collector in

appeal and revision respectively and remitted the matter to the Revenue Divisional Officer for fresh consideration, as per law.

4. In pursuance of the orders of this Court in W.P.No.11790/2006, the Revenue Divisional Officer/second respondent herein, by way of an order vide Rc.No.256/2007-B dated 04.04.2007, imposed the penalty of Rs.1,000/- on the petitioner for the lapses in maintenance of Fair Price Shop. Questioning the said order dated 04.04.2007 the unofficial respondents herein filed appeal before the Joint Collector/first respondent herein. The first respondent herein, by way of an order dated 30.04.2008, vide proceedings A.C.D.Dis.No.11/2007-S7 allowed the said appeal, setting aside the restoration of authorization of the fair price shop dealership of the petitioner herein by the Revenue Divisional Officer.

5. Challenging the validity and the legal acceptability of the said order passed by the Joint Collector, the present writ petition came to be filed.

6. This Court, while issuing *Rule Nisi* on 08.12.2008, granted interim suspension of the impugned order in WPMP.No.34939 of 2008. No counter affidavit has been filed either by the official respondents or by the unofficial respondents, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

7. It is contended by the learned counsel for the petitioner that the order under challenge in the present writ petition is erroneous, contrary to law and violative of Articles 14, 19 (1) (g) of the Constitution of India and opposed to the very spirit and object of the provisions of the Essential Commodities Act, 1955 and the A.P. State Public Distribution System (Control) Order, 2008. It is further contended that the respondents 4 and 5 herein have no *locus standi* to challenge the order passed by the Revenue Divisional Officer dated 04.04.2007, ordering

restoration of the fair price shop authorization subject to payment of Rs.1,000/-. It is nextly contended by the learned counsel for the petitioner that the order passed by the first respondent is in contravention of the orders passed by this Court in W.P.No.11709/2006 dated 08.12.2006. It is further submitted by the learned counsel that as on date petitioner herein is supplying the essential commodities successfully to the card holders without any remark whatsoever.

8. On the contrary, it is vehemently argued by the learned Government Pleader that the present writ petition is not maintainable in view of availability of alternative remedy of revision to the District Collector under A.P. State Public Distribution System (Control) Order, 2008. It is further contended that there is no illegality nor any procedural infirmity in the impugned order and in the absence of the same, the writ petition is liable to be dismissed.

9. The material available before this Court manifestly discloses that this Court allowed W.P.No.11790 of 2006 filed by the petitioner herein, questioning the orders of cancellation of Fair Price Shop authorization passed by the primary authority as confirmed in appeal and revision by the Joint Collector and the District Collector.

10. While setting the said orders, this Court remanded the matter back to the third respondent/Revenue Divisional Officer for fresh consideration as per law and subsequently in pursuance of the said order, the Revenue Divisional Officer by way of an order vide Proceedings R.C.No.256/2007-B dated 04.04.2007 restored the authorization of the petitioner herein and imposed penalty of Rs.1,000/-. The Joint Collector/first respondent herein on a revision filed by the unofficial respondents herein did set aside the order passed by the Revenue Divisional Officer. It is the emphatic submission of the learned Government Pleader that the present writ petition is not maintainable in view of the alternative remedy of revision available to the petitioner under A.P. State Public Distribution System (Control) Order, 2008.

Under Clause 21 of the A.P. Public Distribution System (Control) Order, 2008 any person aggrieved by the order under Clause 20, can file a revision before the District Collector. Admittedly, in the present writ petition petitioner herein, without exhausting the said alternative remedy of revision, filed the present writ petition before this Court under Article 226 of the Constitution of India. Though a number of contentions have been raised by the learned counsel for the petitioner, touching the sustainability of the order impugned, this Court is not inclined to answer the same in view of the said alternative remedy of revision available to the petitioner. This Court, while ordering *Rule Nisi* in the present writ petition, granted interim suspension of the impugned order on 08.12.2008 and till date the same is subsisting. No counter affidavit nor any vacate application has been filed either by the official respondents or by the unofficial respondents herein.

11. For the aforesaid reasons, the writ petition is disposed of, permitting the petitioner herein to file revision before the District Collector, Guntur against the order of the Joint Collector & Additional District Magistrate, Guntur vide A.C.D.Dis No.11/2007-S7 dated 30.04.2008 within a period of two months from the date of receipt of this order. If no such petition is filed within the time stipulated, the respondents are at liberty to take appropriate action in the matter. It is also made clear that if any such revision is filed within the time stipulated, the interim order granted by this Court on 08.12.2008 in WPMP.No.34939 of 2008 shall continue to operate pending disposal of such revision. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 05.02.2014

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HON'BLE SRI JUSTICE A.V.SESHA SAI

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Between:
Ponduri Ramaiah,
s/o Narayana, aged about 50 years,
R/o Potluru village, Savalyapuram Mandal,
Guntur District.

... Petitioner

and

The Joint Collector,
Guntur, Guntur District and four others.

... Respondents