

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No.17851 OF 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed to declare the proceedings of the 2nd respondent in R.C.No.1879/16L, dated 21.05.2016, canceling the petitioner's Fair Price Shop authorization of Shop No.31 of Nagavaram Village, Krosuru Mandal, Guntur District, as arbitrary and illegal.

2. The case of the petitioner is that he is a permanent authorized fair price shop dealer of Nagavaram Village. On 03.03.2016, the Tahsildar, Krosuru, visited the premises of the petitioner, seized the stocks and submitted report to the 2nd respondent. Based on the said report, the 2nd respondent issued a show cause in Rc.No.1879/16L, dated 23.03.2016, which was signed on 24.03.2016. The petitioner received the said the show cause notice, but he did not give any explanation. The 2nd respondent issued Final notice, dated 28.04.2016, which was signed on 30.04.2016, to the petitioner fixing the date of personal hearing as 07.05.2016. But, the said notice was sent to the office of Tahsildar, Krosuru on 11.05.2016 and then served on the petitioner on the same day. After receipt of notice, the petitioner submitted written explanation on 20.05.2016 by courier, which was received by the 2nd respondent on 21.05.2016. Even after the receipt of the same, the 2nd respondent passed orders canceling the authorization of the petitioner's fair price shop.

3. Learned counsel for the petitioner submits that the 2nd respondent issued final notice violating the principles of natural justice; that the petitioner submitted a detailed explanation on 20.05.2016 to the 2nd respondent through courier service and that the petitioner is

ready to participate in the enquiry to substantiate the defences available to him.

4. Learned Government Pleader for Civil Supplies opposes the writ petition and submits that there is no material before this Court that the petitioner has in fact submitted the explanation; that at any rate show cause notice, dated 23.03.2016 was issued granting seven days time for submitting the explanation; that the petitioner having received the show cause did not choose to submit explanation within the time stipulated and now he claims that he submitted explanation on 20.05.2016. He further submits that the petitioner has an alternative remedy of appeal before the Joint Collector against the impugned order passed by the 2nd respondent.

5. In view of the limited aspect, there is no requirement of entering into the merits of the case. The very material placed before this Court, *prima facie* would disclose that the notice of personal hearing dated 23.03.2016 was served on the petitioner on 11.05.2016 intimating the date of hearing as 07.05.2016.

6. In those circumstances, the petitioner could not have availed the liberty of submitting explanation provided to him under the said notice. Even assuming that the petitioner had not submitted his explanation pursuant to the notice, dated 23.03.2016, there was an opportunity of appeal available to him to put forth his defences. In the absence of any explanation by the petitioner before the 2nd respondent, except reiterating the allegations made in the show cause notice, the 2nd respondent cannot say anything further while giving a finding on the charges framed against him. The only liberty of preferring an appeal, which was available to the petitioner, was in fact not availed by the petitioner for obvious reasons. In those circumstances, in the interest of justice, the impugned order requires to be set aside.

7. Therefore, the impugned order, dated 21.05.2016 is set aside with a direction to the 2nd respondent to pass appropriate orders after giving due opportunity of personal hearing to the petitioner and taking into consideration the explanation dated 20.05.2016 alleged to have been submitted by him through Courier. Petitioner is also at liberty to place a copy of explanation dated 20.05.2016 once again before the 2nd respondent for consideration.

8. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

CHALLA KODANDA RAM, J

JUNE 08, 2016

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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Date: 08.06.2016