

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

TUESDAY, THE TWENTY THIRD DAY OF FEBRUARY TWO
THOUSAND AND SIXTEEN

-
Present

HON’BLE SRI JUSTICE CHALLA KODANDA RAM

-
WRIT PETITION No.5431 of 2016

Between:

Ravada Chintalu,
S/o. Late Peda Ramulu,
Hindu, Aged 70 years, Dealer F.P. Shop No.15,
Pathavalasa Village, K.Kotapadu Mandal,
Visakhapatnam District.

.. Petitioner

AND

The State of Andhra Pradesh,
Rep. by its Pr. Secretary,
Civil Supplies, Secretariat,
Hyderabad & 3 others

.. Respondents

The Court made the following:

-
-
-
-
-
-
-
-
-

-
-
-

-
-
-
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

-
WRIT PETITION No.5431 of 2016

-
ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking writ of mandamus to declare all the proceedings flowing from Panchanama, dated 05.02.2016, in respect of Fair Price Shop No.15 of Pathavalasa Village and consequently action of seizure and handing over to another dealer as illegal and by nullifying all the proceedings, to continue the petitioner as Fair Price Shop dealer by returning the stocks of Rice 1870 Kgs, MDM Rice 185 Kgs and Atta 80 Kgs.

2. The petitioner has been appointed as Fair Price Shop Dealer for Shop No.15 of Pathavalasa Village, K. Kotapadu Mandal, Visakhapatnam District. While so, on 05.02.2016, the Deputy Tahsildar, Civil Supplies, K.Kotapadu Mandal, Visakhapatnam District (4th respondent) along with officials of Vigilance and Enforcement has seized the PDS Commodities i.e., Rice 1870 Kgs, MDM Rice 185 Kgs and Atta 80 Kgs from the shop of the petitioner on the allegation that there is shortage of 55 Kgs of Rice and excess of 67 Kgs of Atta was noticed when compared with the book balance and ground balance. The petitioner is seeking to declare the proceedings, dated 05.02.2016, as illegal and to continue the petitioner as Fair Price Shop dealer by returning the seized stocks. Hence, the present Writ Petition.

3. Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies appearing for the respondents.

4. Relying on the decision of this Court in ***D.Sambasiva Rao Vs. Joint Collector, Guntur***^[1], which was subsequently followed by this Court in ***M.Venkata Ramaiah Vs. Joint Collector (CS), Ananthapur District***^[2], the learned Counsel for the petitioner submits that the maximum period of suspension of the authorization of a dealer can not be for a period of exceeding ninety days.

5. On the other hand, learned Government Pleader for Social Welfare places reliance on the judgment of this Court and this Court in the case of ***Joint Collector, Kurnool vs. A. Neelima***^[3] took a different view and opined that there is no hard and fast rule that the suspension pending enquiry cannot be beyond a period of maximum of 90 days and the opinion of the Division Bench that the order of suspension cannot be used as a pretext for indefinite postponement of the operation of the fair price shop dealership making it in effect cancellation of the dealership. Such an order of suspension, like every executive and administrative act, has to be founded upon fair play and lack of arbitrariness. In that view of the matter, the continuation of order of suspension indefinitely would be only arbitrary and could not be allowed. However, what is reasonable period of suspension will vary from case to case depending upon various factors, though more often than not, a period of 90 days should ordinarily be sufficient to conclude the enquiry. In fact, the Division Bench referred to the case of ***Joint Collector, Kurnool*** (3 supra), which was relied upon by the learned single Judge of this Court in a judgment reported in ***D. Sambasiva Rao's case*** (1 supra). The judgment reported in ***M. Venkata Ramaiah's case*** (2 supra) had relied on in the case of ***D. Sambasiva Rao*** (1 supra). In ***D. Sambasiva Rao's case*** (1 supra), the order of the Division Bench of this Court explaining the

judgment of the Division Bench in **Joint Collector, Kurnool** (3 supra) was not cited. The views expressed in **D. Sambasiva Rao's case** (1 supra), and **M. Venkata Ramaiah's case** (2 supra) being contrary to the views expressed by the Division Bench of this Court in **Joint Collector, Kurnool** (3 supra).

6. The material on record discloses that the petitioner's authorization in respect of Fair Price Shop No.15 of Pathavalasa Village is neither suspended nor cancelled. As long as the authorization granted to the petitioner is neither suspended nor cancelled, the petitioner would be entitled to continue as Fair Price Shop dealer.

7. In that view of the matter, the Writ Petition is allowed by directing the respondent authorities to continue the petitioner as Fair Price Shop dealer and to issue essential commodities for public distribution so long as the authorization granted in favour of the petitioner is neither suspended nor cancelled. However, this order shall not be construed as restraining the respondent authorities from conducting enquiry and to take necessary action under the relevant control orders. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

Date: 23rd February, 2016

KL

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

-
-
-
-
-
-
-
-
-
-
-
-
-

-
-
-
-
-
-
-
-
-

WRIT PETITION No.5431 of 2016

-

Date: 23rd February, 2016

KL

[\[1\]](#) 2007(6)ALT 239
[\[2\]](#) 2014 (4) ALT 542
[\[3\]](#) APLJ-1996-1-285