

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.19991 of 2017

ORDER:

The petitioner M/s. Vanukuri Sambireddy & Company a partnership firm represented by its Managing Director V.Sambireddy filed this writ petition against 5 respondents viz., State of A.P. rep by its Principal Secretary, Agricultural & Co-Operation Department, the Commissioner & Director of Agricultural Marketing, the Regional Joint Director of Marketing, the Chairman of the Agricultural Market Committee, Guntur and the Agricultural Market Committee, Guntur represented by its Secretary seeking mandamus declaring the action of the 5th respondent in not renewing the licence bearing No.CA/103/2008-2013 as commission agent, for the period of 2013-18 by issuing common notice dated 30.10.2015 in RC.No.384 of 2015 insisting upon fulfillment of the conditions laid down in G.O.Ms.No.57, Agriculture & Co-operation dated 12.10.2015, as illegal, arbitrary, irrational and in violation of Articles 14, 19(1)(g) and 21 of the Constitution of India and also for the reason said G.O.Ms.No.57 runs in conflict with G.O.Ms.No.64 Agriculture & Co-operation Department dated 11.06.2013 and stultifies/derogates the operation of Sections 7(1) and (1-B) of A.P. (A.P. & L.S.) Markets Act, 1966 (for short 'the Act') as amended by Act No.14 of 2015 and defeats the very purport of Rule 48(5) of A.P. (A.P. & L.S.) Market Rules, 1969 and consequently direct the respondent No.5 to grant/renew the licence of the petitioner firm for the period 2013-18.

As per the writ petition supporting affidavit, the petitioner firm had obtained licence in the year 1997 and renewed from time to time and the licence is valid up to 2008-2013 and thereafter the petitioner submitted an application in Form-5 for renewal of the licence for the period of 2013-18 accompanied by remittance of licence fee on 30.03.2013 before its expiry on 31.03.2013 and there is no default in payment of Market Fees or rentals including for the new plot No.A6/197 of the market yard allotted. Pursuant to the guidelines/instructions in the memo dated 21.03.2014, the petitioner incurred the consequences of cancellation of its licence and became enabled to carry on business, pending grant of licence the petitioner on 09.05.2014 remitted late fee and submitted an application in Form-5 on 13.05.2014 for grant/renewal of licence for the period 2013-18. It is further averred that as per G.O.Ms.No.64 dated 11.06.2013, the licences issued prior to issuance of G.O.Ms.No.17 dated 31.01.2013 shall be renewed and 5th respondent lamentably fails to perform statutory obligation within 45 days and kept the application undecided to the prejudice of the petitioner. Sections 7(1) & 7(1-B) of the amended Act and Rule 48(5) of the Rules thereunder speak that the 5th respondent is under obligation to consider the renewal application for license within 45 days from the receipt of the application and to record reasons in the event of rejection of renewal.

It is further averred that the 2nd respondent in the proceedings dated 18.04.2013 ordered an enquiry on the allegations as to conversion of partnership firm into proprietary and proprietary concerns into partnership firms besides effecting change of names of firms and in directing the 5th respondent not to

renew the licences and having been aggrieved therefrom the Guntur Chillies Merchant Association preferred an appeal questioning the legality and correctness of said proceedings of the 2nd respondent and the 1st respondent passed an interim order directing the 5th respondent to permit the members of the Guntur Chillies Merchant Association to carry on business and decided the appeal by issuing memo No.13631/AM-IV/2013 dated 21.03.2014 in directing the 2nd respondent to permit 5th respondent to issue licences besides put at rest all the controversies haunting the renewal of licences with guidelines for granting and renewal of licences. The petitioner firm later on 09.05.2014 remitted late fee and again submitted the application on 13.05.2014 in form-5 for grant/renewal of licence for the period 2013-18 and forwarded all necessary documents in fulfillment of grant/renewal of licence, however the 5th respondent-Market Committee chosen to maintain silence by un-deciding the same despite there is G.O.Ms.No.64 and memo dated 21.03.2014 supra and in contravention to Rule 48(5) of the Rules supra. The Government issued G.O.Ms.No.190 dated 06.04.1994 prescribing conditions with regard to security deposit for securing licence and later G.O.Ms.No.260 dated 28.09.2010 with modified guidelines and conditions for renewal and issuance of licence and later G.O.Ms.No.17 dated 31.01.2013 by amendment with regard to security deposit and same was followed by G.O.Ms.No.63 dated 10.06.2013 by amendment to Para 4 of G.O.Ms.No.17 and later issued G.O.Ms.No.64 dated 11.06.2013 saying all commission agent licences which are issued prior to 31.01.2013 be renewed as per the guidelines of G.O.Ms.No.190 dated 16.04.1994 by resolving the controversies. The 1st

respondent issued G.O.Ms.No.57 dated 12.10.2015 having laid down conditions of commission agent licence holders are required to pay security deposit of turnover of commission agents and not on turnover income of Committee and 5th respondent issued common notice in RC.No.384 dated 31.10.2015 demanding the said compliance for renewal of licence despite the application of the petitioner firm pending with 5th respondent and G.O.Ms.No.57 has no application to the petitioner. In W.P.No.39011 of 2015 this Court dealt with applicability of G.O.Ms.No.57 and the legal implications arising out of memo dated 21.03.2014 and held G.O.Ms.No.57 cannot be applied by directing to consider the application for grant of licence without reference to said G.O.Ms.No.57, by applying norms of G.O.Ms.No.190 dated 06.04.1994 and following the same several writ petitions were allowed including W.P.No.2334 of 2016, 6445 of 2017 & 9479 of 2017. It is the further submission that the present prayer in the writ petition squarely covered by said order of W.P.No.39011 of 2015 dated 02.12.2015, hence to allow the same as prayed for.

The counter affidavit filed by the 5th respondent on behalf of respondent Nos.4 & 5 is that the petitioner who got licence in the year 1997 later renewed time to time and valid till 2013 from 2008 submitted application in form-5 for its renewal from 2013-18 accompanied by remittance of fee on 30.03.2013 before expiry of the licence by 31.03.2013. There are some allegation on 292 commission agents licences in the Market Committee specifically the partners in partnership firm changed without intimation to the Market Committee and where some partners retired new partners joined and some proprietary concerns changed as partnership firm

and vice-versa and there are many allegations in relation thereto and the 2nd respondent intimated the 5th respondent not to renew the licence involving the allegations and on the representation of the commission agents the Commissioner gave 2 months time and allowed them to do business later constituted a committee to identify the allegations on 292 commission agents licence and from report came to the conclusion of all the licences of the year 2008-13 should cancel and in place of old licence respondent Nos.4 & 5 to issue fresh licence and based on that memo, the commission agents approached the Market Committee agreeing for cancelling the old licence and paid requisite fee for obtaining new licence and even after payments made by the commission agents the issue was not settled by respondent Nos.1 & 2 and some commission agents filed writ petitions for renewal of the licences and W.P.No.39011 of 2015 was allowed directing respondent Nos.4 & 5 to renew the licence by following G.O.Ms.No.190 and not the G.O.Ms.No.57 and pursuant to the orders licences were issued and the respondent Nos.4 & 5 are ready to renew the licence of the petitioner after submitting required documents as per G.O.Ms.No.190 and without submitting any documents, the writ petitioner directly approached the Court and thereby sought for disposal of the writ petition on merits.

Heard both sides and perused the material on record.

Now the point for consideration is whether the petitioner firm is entitled for renew or re-issuance of the licence.

In deciding the above point for consideration even from the counter affidavit averments the petitioner's firm licence continued

from 1997 and covered by G.O.Ms.No.190 dated 06.04.1994 which GO in force when the licences were granted and it was renewing from time to time also by following subsequent GOs to the extent of renewal concerned and it was renewed from time to time till 2013 and it is later the renewal was not done by ordering to get fresh licence. However it is for no fault apparently the licence was not renewed and to obtain licence the Market Committee cannot insist G.O.Ms.No.57 compliance as it is practically a renewal of the existing licence and not a fresh licence the petitioner is seeking and the same issue once answered by this Court as rightly admitted in Paras 6 & 7 of the counter affidavit of the writ petition and as per the order in W.P.No.39011 of 2015 the respondents are bound to renew or reissue the licence in favour of the petitioner firm pursuant to G.O.Ms.No.190 subject to submitting of documents or other requirements by the petitioner.

Accordingly and in the result, the Writ Petition is allowed directing the respondents to renew the licence/reissue the licence of the petitioner within one (01) month from the date of receipt of a copy of this order and if at all any further requirements to be complied pursuant to G.O.Ms.No.190 by the petitioner firm, the petitioner firm to comply with to get the renewal within the above period of time.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.08.2017
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