

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.1606 OF 2017

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue a writ or order more particularly one in the nature of writ of mandamus or an appropriate writ or order declaring inaction of the 2nd respondent in not passing any orders on the stay petition filed along with an appeal dated 23.04.2016 filed challenging the proceedings No.R.C.C./1319/2015, dated 17.12.2016 passed by the 3rd respondent where under cancelled the authorization of the petitioner Shop No.2, Bhupathipalli Village, Markapuram Mandal, Prakasam District, without conducting an independent enquiry as illegal, arbitrary and contrary to the principles of natural justice and consequently set aside the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. Heard the learned counsel for the petitioner and learned Government Pleader for the respondents.

3. According to the petitioner, she was appointed as permanent fair price shop dealer of shop No.2 of Bhupathipalli Village, Markapuram Mandal, Prakasam District, 22 years back and since then, she has been

distributing the essential commodities to the cardholders in the village. Earlier, when the authorization of the petitioner was cancelled by the Revenue Divisional Officer, by way of an order dated 18.04.2016, she filed an appeal before the Joint Collector and questioning the inaction on the part of the authorities in passing orders on the stay petition, W.P.No.15813 of 2016 was filed before this Court. This Court, by way of an order dated 29.04.2016, disposed of the said writ petition directing the Joint Collector to dispose of the appeal filed by the petitioner, within a period of four weeks from the date of receipt of a copy of the said order and further granted stay of proceedings dated 18.04.2016, pending disposal of the appeal and the stay petition. Subsequently, the Joint Collector, vide proceedings dated 30.09.2016, remanded the matter to the primary authority i.e., Revenue Divisional Officer, for fresh enquiry. Pursuant to the same, the Revenue Divisional Officer, by way of an order bearing R.C.C.No.1319/2015, dated 17.12.2016, cancelled the authorization of the petitioner. Assailing the validity of the said order, the petitioner herein filed an appeal before the Joint Collector on 21.12.2016. Along with the said appeal, petitioner herein also filed a stay petition, seeking stay of operation of the order of cancellation dated 17.12.2016.

4. It is submitted by the learned counsel for the petitioner that the order passed by the Revenue Divisional Officer is highly illegal, arbitrary and opposed to the very spirit and object of the Clause 20 of A.P. State Public Distribution System (Control) Order, 2008. It is further submitted by the learned counsel for the petitioner that the primary authority did not conduct the enquiry as per law and did not furnish the documents which were the basis for issuance of show-cause notice. It is further submitted that at the time of inspection of the premises, the petitioner was not present as she had gone to the hospital. It is further stated that the Joint Collector did neither pass any orders on the stay petition nor taken up the main appeal and in view of the same, the petitioner herein is put to lot of hardship and inconvenience.

5. On the contrary, it is submitted by the learned Government Pleader that there is no illegality in the order passed by the primary authority and having invoked the alternative remedy, it is not open to the petitioner to maintain the present writ petition under Article 226 of the Constitution of India and it is further stated by the learned Government Pleader that the appellate authority may be directed to dispose of the appeal.

6. Having considered the respective submissions and taking into consideration the pendency of the appeal and stay

petition before the Joint Collector, this Court deems it appropriate to direct the Joint Collector – 2nd respondent herein to dispose of the same by fixing some timeframe.

7. For the aforesaid reasons, writ petition is disposed of, directing the Joint Collector – 2nd respondent herein, to pass appropriate orders on the stay application dated 21.12.2016, within a period of three weeks from the date of receipt of a copy of this order. Till the stay application is disposed of, the petitioner herein shall be permitted to continue as a fair price shop dealer.

8. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

18.01.2017
SS

A.V.SESHA SAI, J

Note: issue C.C. in two days.
B/o.SS