

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

W.P.NO.11580 OF 2017

ORDER

Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies (Andhra Pradesh).

By way of order in R.C.F/6641/2014 dated 19.08.2015, the 3rd respondent - Revenue Divisional Officer, Kandukuru passed order cancelling the dealership authorization of the petitioner in respect of fair price shop No.08, Juvvaleru village, Podili Mandalam, Prakasam District. Against the said order of cancellation, petitioner filed an appeal before the Collector (CS) Prakasam District, Ongole under Clause 20 of A.P.State PDS Control Order, 2008. Along with the said appeal, he also filed an application seeking to condone the delay of 229 days in filing the said appeal. By way of order under challenge, the Collector (CS) Prakasam District, dismissed the said delay condone application and consequently returned the appeal.

According to the learned counsel for the petitioner, the said order of dismissal of the condone delay application, is highly illegal, arbitrary, and violative of Article 14 of the Constitution of India and contrary to the very spirit and object of A.P.State PDS Control Order, 2008. It is further submitted by the learned counsel for the petitioner that the appellate

authority did not take into consideration the averments made in the affidavit filed in support of the delay condone petition and passed order under challenge in a mechanical manner.

On the other hand, the learned Government Pleader for Civil Supplies (Andhra Pradesh) submitted that there is no illegality in the impugned order, and such, the order under challenge is not amenable to judicial review under Article 226 of the Constitution of India.

A perusal of the affidavit filed in support of the condone delay application, which is also filed along with the writ petition as a material paper, shows that the petitioner herein stated in the said affidavit that he could not file the appeal within time before the appellate authority on the ground of illness due to chickengunia, for which he had taken treatment in a nursing home at Ongole. It is further stated that he was advised to take rest for three months.

A perusal of the order under challenge shows that the Collector (CS) Prakasam District, except stating that the reasons assigned in the affidavit are not convincing, did not consider the veracity of the said averments made in the affidavit filed in support of the condone delay application. Being a quasi-judicial authority, it is incumbent on the part of the said authority to

consider the entire material available on record and come to a conclusion, supported by reasons. In the instant case, the same is conspicuously absent. Therefore, this court is of the opinion that the matter requires fresh consideration by the appellate authority.

For the foregoing reasons, the writ petition is allowed, setting aside the order passed by the Collector (CS), Ongole, Prakasam District, in RC.CS2/81/2016 dated 11.04.2016 and the consequently, the condone delay application and the appeal filed by the petitioner are restored to file. The competent authority, who is the 2nd respondent – Joint Collector, is directed to consider the condone delay application afresh after issuing notice and by affording an opportunity of hearing to the petitioner and pass appropriate orders in accordance with law, within a period of three months from the date of receipt of a copy of this order.

No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

A.V.SESHA SAI,J

DATE:03—04—2017

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