

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

W.P.No.46676 of 2016

ORDER:

This writ petition filed under Article 226 of the Constitution of India, challenges the order passed by the Revenue Divisional Officer-3rd respondent herein vide Ref.No.B/559/2015 dated 28.10.2016.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies, apart from perusing the material available on record.

3. According to the petitioner, earlier the 3rd respondent issued a show cause notice vide Ref.No.559/2015 dated 2.6.2015 and in response to the same, petitioner herein submitted an explanation on 9.6.2015. Subsequently, the 3rd respondent vide proceedings dated 23.7.2015, suspended the authorisation of the petitioner. Assailing the validity of the said order, petitioner herein filed W.P.No.26018 of 2015 before this Court. The said writ petition was allowed by this Court and the operative portion of the said order reads as under:

“In the circumstances, this Court is satisfied that the power of suspension was not properly exercised and the impugned order dated 23.7.2015 of the third respondent is suspended pending enquiry and it is left open to third respondent to conduct enquiry in respect of the charges levelled against the petitioner by due notice and opportunity to the petitioner and pass final orders thereon within a period of three months from the date of receipt of a copy of this order”.

4. Subsequently, the 3rd respondent issued a show cause notice dated 28.12.2015. In response to the same, the petitioner offered his explanation on 8.1.2016. The 3rd respondent by way of order dated 8.1.2016, cancelled the authorisation of the petitioner. Questioning the same, petitioner filed W.P.No.7473 of 2016 before this Court and this Court allowed the said writ

petition by way of order dated 9.3.2016, setting aside the order of cancellation dated 8.1.2016 with a liberty to the 3rd respondent to conduct enquiry afresh in accordance with law. Thereafter, the 3rd respondent vide Ref.No.B/559/2015 dated 12.9.2016 issued a show cause notice and in response to the same, petitioner appeared before the 3rd respondent on 24.10.2016. Later, the 3rd respondent by way of proceedings dated 28.10.2016, passed final order cancelling the fair price shop authorisation of the petitioner herein. Challenging the validity and legal sustainability of the said order passed by the 3rd respondent, the present writ petition is filed.

5. According to the learned counsel for the petitioner, the impugned order of cancellation dated 28.10.2016 is arbitrary, illegal and violative of Article 14 of the Constitution of India, besides being opposed to the very spirit and object of A.P. Public Distribution System (Control) Order, 2008. It is further submitted by the learned counsel that without there being any proper proof of the allegations levelled against the petitioner, the 3rd respondent passed order under challenge. It is further submitted that no card holders including the alleged complainant gave complaint against the petitioner and despite the same, the 3rd respondent cancelled the authorisation of the petitioner basing on the issues which were never part of the charges levelled against the petitioner. It is further submitted by the learned counsel that cancellation of authorisation of fair price shop cannot be undertaken on flimsy grounds and the charges levelled against the petitioner are not serious in nature.

6. On the other hand, a preliminary objection as to the maintainability of the present writ petition has been taken by the learned Government Pleader, stating that as per Clause 20(2) of A.P. Public Distribution System (Control) Order, 2008, any person aggrieved by the order of the Revenue Divisional Officer, may file appeal before the Joint Collector. It is submitted by the learned Government

Pleader that without availing the said effective alternative remedy, the petitioner herein has directly approached this Court. Clause 20 of the Control Order reads as under:

“Appeal:

1. Any person aggrieved by any order passed by the appointing authority under Clause (5) may, within thirty days from the date of receipt by him/her of such order, appeal against such order, where it is passed by:

(i) The Revenue Divisional Officer or the Sub-Collectors or the District Supply Officer (city) having jurisdiction over the area in respect of the Visakhapatnam city to the Joint Collector in the District.

(ii) The Chief Rationing Officer in Hyderabad District.

In disposing of any appeal under this clause, the appellate authority may, after giving the party an opportunity of making his representation, pass such order thereon as that authority may deem fit.

2. Pending disposal of an appeal, the appellate authority may direct that the order appealed against shall not take effect until the appeal is disposed of.”

7. Having regard to the above provision of law, which provides for appeal against the order impugned, this Court is not inclined to go into the merits and demerits of the order impugned. However, taking into consideration the submission made by the learned counsel for the petitioner, this Court is of the considered opinion that ends of justice would be served if the petitioner is permitted to avail the alternative remedy of appeal as mentioned supra.

8. For the aforesaid reasons, the writ petition is disposed of, keeping it open to the petitioner herein to file appeal before the 2nd respondent-appellate authority questioning the order passed by the 3rd respondent vide Ref.No.B/559/2015 dated 28.10.2016 within a period of one week from the date of receipt of this order and if any such appeal is filed within the time stipulated, the same shall be considered and appropriate orders be passed, in accordance

with law by the 2nd respondent, within a period of four weeks thereafter, after giving notice and opportunity of being heard to the petitioner. Till such exercise attains finality, the respondent authorities shall not make any permanent arrangements insofar as subject fair price shop is concerned. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

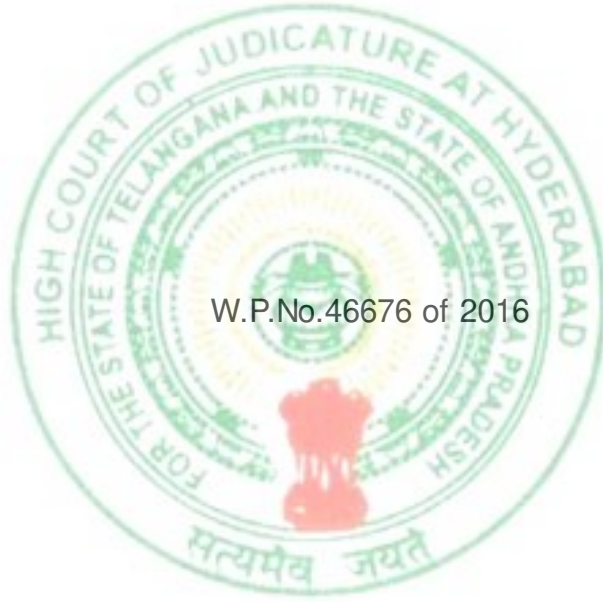
A.V.SESHA SAI, J

Date: 17.1.2017

Note:
Issue C.C. forthwith.
B/o
DA



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



17.1.2017

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