

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.37827 of 2017

ORDER:

This writ petition is filed seeking the following relief:

“..to issue a Writ of Mandamus or any other appropriate Writ or Writs, Orders or Directions, declaring the impugned order in Procs Rc. No.A6/1133/2017 dated 16.10.2017 on file of the 3rd Respondent, as wholly illegal, arbitrary and without jurisdiction, consequently permit the Petitioner to file explanation to the show cause notice dated 29.09.2017 and pass orders after considering the explanation to be filed by the Petitioner and pass such other and further orders as are deemed fit and proper in the circumstances of the case.”

[Reproduced verbatim]

I have heard learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise appearing for respondents 1 to 4. Perused the material record.

The facts, which are necessary for consideration and which are required to be stated as a prelude to the order, are as follows:

The petitioner herein filed W.P.No.36868 of 2017 before this Court complaining against the second respondent for not taking up the appeal and passing appropriate orders. This Court, after hearing both sides, disposed of the said writ petition by order, dated 03.11.2017. The operative portion of the said order reads as follows:

“In the result, the Writ Petition is disposed of directing the Deputy Commissioner of Prohibition & Excise, Mahabubnagar District, 2nd respondent herein, to dispose of the appeal preferred by the petitioner within a period of two (02) weeks from the date of receipt of a copy of this order, however, in strict accordance with the procedure established by law and communicate a copy of the order within a week thereafter to the petitioner. It is, however, made clear that in case the 2nd respondent is not in a position to dispose of the appeal, he shall at least consider the application for

grant of stay in an appropriate manner, however, in strict procedure established by law.”

Admittedly, the petitioner has not given any explanation to the show cause notice. While so, in the pending appeal, a notice, dated 31.10.2017, was issued to the petitioner through the third respondent and the said notice was served on the petitioner on 04.11.2017. The date of hearing of the appeal is fixed as 09.11.2017 at 11.00 A.M. In the meanwhile, for not giving an explanation to the show cause notice, dated 29.09.2017, the impugned order has come to be passed.

The submission of the learned counsel for the petitioner is that by oversight and in view of the pendency of the appeal, the petitioner has not given any explanation and that taking advantage of the said fact, the impugned order has come to be passed even though the appeal is pending and that in view of this order, the appeal has become infructuous and that therefore, an opportunity may be given to the petitioner to give an explanation after setting aside the impugned order by consequently directing the authority concerned i.e., the third respondent to pass a fresh order pursuant to the show cause notice, after receiving explanation of the petitioner.

Learned Government Pleader submits that adulteration of toddy with dangerous substances is rampantly taking place in Mahabubnagar District and that the persons like the petitioners are often not submitting their explanations and are coming before the Courts and are seeking orders on humanitarian grounds and that in view of the dangerous consequences of adulterated toddy, no lenient view shall be taken in this matter.

I have given earnest consideration to the facts and submissions. In the light of the fact that if no order is granted to the petitioner, the appeal already filed becomes infructuous, this Court is of the considered view that an opportunity can be given to the petitioner in the interest of justice.

In the result, the writ petition is allowed and the impugned order is set aside and the petitioner is directed to give its written explanation to the third respondent within 10 days from the date of receipt of a copy of this order. It is made clear that on the petitioner filing such explanation, the third respondent shall consider and dispose of the matter as expeditiously as possible and preferably within three weeks from the date of receipt of the explanation of the petitioner and communicate the decision taken thereon to the petitioner within a week thereafter. This order shall not preclude the appellate authority from disposing of the appeal as per the directions in the earlier orders of this Court in the aforestated writ petition.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

M. SEETHARAMA MURTI, J

Date: 10.11.2017
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