

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

WRIT PETITION No.11623 of 2018

ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader for Civil Supplies.

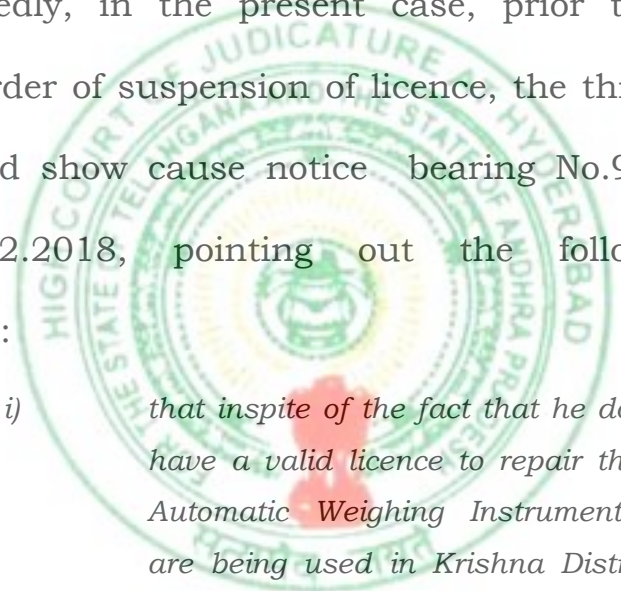
The order of suspension of licence of the petitioner herein, passed by the Regional Deputy Controller, Legal Metrology, Guntur-third respondent herein, vide proceedings bearing No.90/RDC/2018, dated 19.03.2018, under Rule 12 of the A.P.Legal Metrology (Enforcement) Rules, 2011 (for brevity, 'the Rules'), is under challenge in the present Writ Petition.

Learned counsel for the petitioner contends that the order impugned in the Writ Petition is highly arbitrary, illegal, unreasonable and violative of the principles of natural justice besides being contrary to the rules. In elaboration, it is further submitted by the learned counsel that, though the respondents gave an opportunity of filing explanation and despite the fact that the petitioner herein filed the explanation, the respondent-authorities did not consider the said explanation offered by the petitioner herein and had the same been considered by the respondents, the impugned order would not have emanated. It is further contended by the learned counsel that the reasonable

opportunity, as stipulated in Rule 12 of the Rules, is not a mere formality and it should be implemented in its letter and spirit.

On the other hand, it is submitted by the learned Government Pleader that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and, in the absence of the same, the impugned action cannot be faulted nor it is amenable for any judicial review under Article 226 of the Constitution of India.

Admittedly, in the present case, prior to issuing the impugned order of suspension of licence, the third respondent herein issued show cause notice bearing No.90/RDC/2018, dated 21.02.2018, pointing out the following alleged irregularities:

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- i) *that inspite of the fact that he does not have a valid licence to repair the Non-Automatic Weighing Instruments that are being used in Krishna District, on 13.01.2018 vide challan No.206, he had collected an amount of Rs.950/- (rupees nine hundred and fifty only) from one Sri B.Suresh, S/o Yedukondalu at Shop No.13, Rajiv Gandhi Wholesale Flower Market, Vijayawada, by stating that necessary stamping will be arranged to the Non-Automatic Weighing Instrument (Make:ONIDA) used at the above said shop which deals in flowers. While doing so he removed the existing statutory lead "Seal" that was fixed and*

available to the said weighing instrument and a blank Lead Plug was affixed to the said instrument.

- ii) *that according to the statement Dt.28.01.2018 of the Secretary of the Rajiv Gandhi Wholesale Flower Merchants' Association, Vijayawada, wherein it was stated, inter alia that on 25.01.2018 the above said K.Purnchandra Rao, Proprietor of M's Harsha Electronics, repaired (12) Non-Automatic Weighing Instruments that are being used by the Flower Merchants and collected Rs.750/- for each 30 Kg. capacity Weighing Instrument and Rs.950/- for each 100 kg. Weighing Instrument".*

In response to the said show cause notice and the contents of the same, the petitioner herein submitted an explanation on 11.03.2018, denying the allegations made in the show cause notice, and, thereafter, the third respondent passed the impugned order, keeping the licence of the petitioner under suspension pending enquiry.

Admittedly enquiry is pending with the third respondent under Rule 12 of the Rules. Another contention raised by the learned counsel for the petitioner is that, under Rule 12 of the Rules, only the Controller or such other officer authorized by him is entitled to exercise the power under the said Rule. During the course of arguments, proceedings No.135/L/2018, dated 06.02.2018, passed by the Controller, Legal Metrology,

A.P., Vijayawada, authorizing the third respondent, is placed on record by the learned Government Pleader. Therefore, the said contention cannot be sustained.

It is also the submission of the learned counsel that the very basis for the impugned action is the report of the fourth respondent and, according to the learned counsel, the fourth respondent has no power to do so as Vijayawada does not fall under the jurisdiction of the fourth respondent.

Since the enquiry is pending, admittedly, before the third respondent, under Rule 12 of the Rules, and as the petitioner herein also submitted his explanation to the show cause notice, this Court deems it appropriate to dispose of the Writ Petition with a direction to the third respondent to complete the enquiry, pursuant to the show cause notice, dated 21.02.2018, by taking into consideration the explanation offered by the petitioner herein and pass final orders after giving the opportunity of hearing to the petitioner herein within a period of one month from the date of receipt of a copy of this order. It is made clear that the petitioner herein is also entitled to raise further grounds in writing during the course of enquiry before the third respondent.

With the above observation, the Writ Petition stands disposed of. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Writ Petition, shall stand closed.

A.V.SESHA SAI,J

11th April, 2018

Note:

*Furnish C.C. of the order
within four days.*

B/o

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