

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.22550 of 2018

ORDER::

The writ petition is filed assailing order dated 29-03-2018 passed by the 1st respondent as being illegal, arbitrary and set aside the same including the LPG dealership allotment made to the 2nd respondent and consequently direct the 1st respondent to allot the LPG dealership in respect of Borlagudem, Jayashankar District, to the petitioner in the interest of justice.

2. Heard learned counsel for the petitioner.

3. It is to be seen that on earlier occasion, the petitioner filed writ petition being WP No.13835 of 2018 seeking for the self same relief as claimed in the present writ petition, WP No.22550 of 2018.

In writ petition No.13835 of 2018, petitioner's counsel sought permission of the Court to withdraw the writ petition and accordingly permission was accorded and the writ petition dismissed as withdrawn on 27-06-2018.

4. Sri B. Mayur Reddy, learned standing counsel for the respondents submits that the petitioner withdrew the writ petition i.e. WP No.13835 of 2018 and no liberty obtained to file a fresh writ petition and, therefore, the 2nd writ petition, i.e. the present writ petition, filed on the same cause of action is not maintainable

and liable to be dismissed. In support of his contention, learned standing counsel relied on the decision of the Supreme Court in

VINOD KAPOOR vs. STATE OF GOA.¹

5. The subject matter of challenge in earlier writ petition and this writ petition is same. There is no change in cause of action. It is very unfortunate the petitioner filed a 2nd writ petition, even though the earlier writ petition filed on the same cause of action is withdrawn without seeking liberty to file fresh writ petition.

6. The Supreme Court in **VINOD KAPOOR's** case has dealt with similar fact situation. Para 9 of the decision reads as under:-

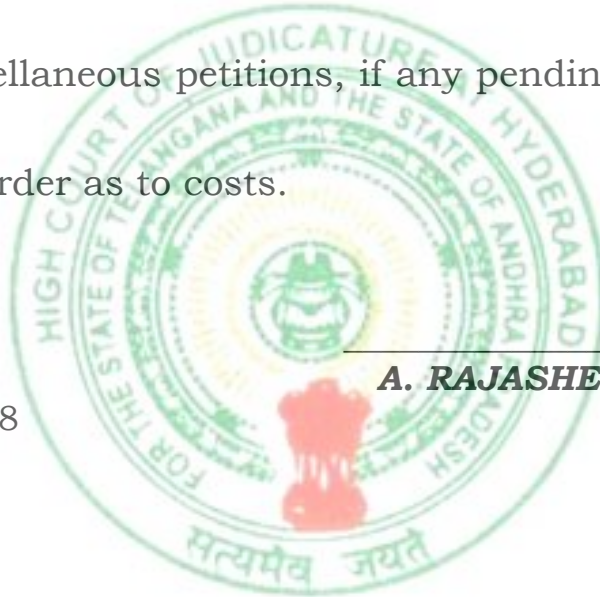
“9. The question that we have to decide is whether the appeal will lie against the order dated 29-01-2000 of the High Court dismissing Writ Petition No.253 of 1999 when an earlier Special Leave Petition against the said order dated 29-01-2000 of the High Court was filed by the appellant but was withdrawn with the permission of this Court to pursue his remedy by way of review against the said order dated 29-01-2000 of the High Court. As the appellant has withdrawn the Special Leave to Appeal against the order dated 29-01-2000 of the High Court with permission to pursue his remedy by way of review instead and had not taken the liberty from this Court to challenge the order dated 29-01-2000 afresh by way of special leave in case he did not get relief in the review application, he is precluded from challenging the order dated 29-01-2000 of the High Court by way of Special Leave to Appeal under Article 136 of the Constitution.”

¹ (2012) 12 SCC 378

7. From the above proposition it is clear that a petition having been withdrawn without liberty to file a petition for the second time, on the same cause of action is barred and not maintainable. Similar fact situation is also emerging in this case. Inasmuch as, the earlier writ petition was withdrawn on own accord of the petitioner, without seeking leave to file 2nd writ petition, the present writ petition filed on the same cause of action, without reserving liberty is not maintainable and it is accordingly dismissed. Miscellaneous petitions, if any pending shall also stand dismissed. No order as to costs.

Dated: 05-07-2018
NRG

A. RAJASHEKER REDDY, J



THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



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