

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.21210 and 21211 of 2019

COMMON ORDER:

Since the subject matter of both the writ petitions being one and the same, they are being disposed of by this Common Order.

The petitioners in these writ petitions are aggrieved by the Second Closure Notice dated 23.09.2019 issued by the 3rd respondent-Deputy Commissioner, GHMC, directing to close their Timber Depots, being operated under the name and style of M/s Limbani Timber Traders, and M/s Jalaram Traders, respectively, at Allwyn X Roads, Chandanagar, within 24 hours from the date of receipt of impugned notice, failing which further action would be taken as per the Greater Hyderabad Municipal Corporation Act, 1955, in addition to referring the matter to Police for necessary action as per the provisions of Indian Penal Code.

Heard Sri K. Muralidhar, learned counsel for the petitioners, Sri Sampath Prabhakar, learned Standing Counsel for GHMC, and the learned Government Pleader for Municipal Administration and Urban Development.

The petitioners were initially issued with a Show Cause notice dated 22.05.2019 alleging that they have not obtained trade license as required under Sections 521 and 622(4) of the GHMC Act, for the past twenty two (22) years, and directed the petitioners to close their business unit within three days of the Notice. The petitioners were also threatened with sealing of their units, however, admittedly, no such sealing was done. Thereafter, yet another notice dated 27.05.2019 was issued under Sections 134, 521, 622 and 134 of the GHMC Act, wherein, apart from referring to the notice dated 22.05.2019, it was stated that many complaints have been received against the petitioners timber depots and that the Assistant Medical Officer of Health (AMOH) inspected the premises on 15.04.2019 and found that the

timber depots were being run without obtaining trade license which is in violation of the GHMC rules and regulations. The AMOH found the following irregularities in his inspection.

1. The timber depot is located quite adjacent to national highway which is causing inconvenience to the commuters and vehicular movements.
2. The timber depot has not having any fire safety measures.
3. This timber depot is causing pollution with the sawdust to the pedestrians and vehiculars which is also causing road accidents.

Therefore, the petitioners were directed to stop the trade and close the premises within 24 hours of receipt of notice. However, no action was taken. On 28.05.2019, the petitioners submitted a detailed explanation running into eight pages which was acknowledged both by the Deputy Commissioner of the Corporation, and also the AMOH. It is the assertion of the petitioners that except the impugned Closure Notice dated 23.09.2019, they had not heard anything from the respondent authorities.

Sri K. Muralidhar Reddy, learned counsel for the petitioners, would submit that the earlier Show Cause notice dated 22.05.2019 and the later notice dated 27.05.2019 are both defective, in that, without first waiting for the reply for the first Show Cause notice dated 22.05.2019, a second notice dated 27.05.2019 came to be issued and, with respect to the first notice, no order has been made invoking Section 7 of the GHMC Act, and that both the notices are vague. It is also his contention that the impugned notice dated 23.09.2019 is liable to be set aside for non-consideration of the explanation and thus it is violation of principles of natural justice. It is also his contention that the impugned notice does not even refer to the explanation submitted by the petitioners, and the same was issued as if no explanation was submitted by the petitioners in response to notices dated 22.05.2019 and 27.05.2019.

Per contra, the learned Standing Counsel Sri Sampath Prabhakar Reddy, opposes the writ petition and submits that though the petitioners have paid fees for renewal of trade license through Online mode, however, no renewal of the trade license was obtained. It is also his contention that the violations committed by the petitioners is clearly spelt out and therefore the impugned notice is not vague. It is his submission that the petitioners may be directed to treat the impugned notice dated 23.09.2019 as a Show Cause notice and submit further explanation which shall be considered by the respondent authorities. Learned Standing Counsel further submits that as the petitioners are causing nuisance and pollution and complaints also have been received, the impugned notice dated 23.09.2019 is justified, particularly considering there is no trade license in favour of the petitioners for the past three years.

Having regard to the respective submissions, the petitioners specific contention that issuance of second Show Cause notice dated 27.05.2019, without even waiting for reply to the first Show Cause notice dated 22.05.2019, does not require much consideration as, admittedly, in the second Show Cause notice dated 27.05.2019, a reference to the first Show Cause notice dated 22.05.2019 was also made. It was threatened that if no reply was received within three days of the notice, the premises would be sealed; however, as a matter of fact, no closure was effected and, thus, no prejudice was caused to the petitioners.

It may further be noted that in the second Show Cause notice dated 27.05.2019, a reference was made to the first Show Cause notice dated 22.05.2019 which was admittedly received by the petitioners but not responded to immediately and, therefore, the second Show Cause notice dated 27.05.2019 can, at best, be assumed to be the Show Cause notice with respect to the issues / violations mentioned therein and also the assertion made by the learned Standing Counsel that the petitioners have

not obtained the trade license for the past 22 years. In those circumstances, one cannot really find fault with the Show Cause notices dated 22.05.2019 and 27.05.2019 *per se*.

As it is not in dispute that the petitioners have submitted explanation on 28.05.2019 and in the impugned notice dated 23.09.2019 there is no reference to the explanation submitted by the petitioners, non-consideration of the explanation and issuing the impugned notice after four months of submitting the explanation / reply to the earlier Show Cause notices, that too, without referring to the explanation / reply submitted by the petitioners is violative of principles of natural justice, particularly, in the context of threat of closure of business.

It would be pertinent to refer here that when an action is impugned alleging violation of Article 19(1)(g) of the Constitution by the respondent authorities, the burden lies heavily on the State to justify their action; and, in the present case, the burden lies heavily on the respondent authorities with respect to impugned action of sealing / effecting closure of petitioners business enterprises.

In that view of the matter, the impugned notice dated 23.09.2019 is unsustainable and is, accordingly, set aside. However, considering the nature of allegations against the petitioners, particularly, causing pollution by running timber business units in a residential locality, and there being no fire safety measures incorporated in their business operations, and further considering that the impugned notice 23.09.2019 mentions certain other violations which are not mentioned in the first Show Cause notice dated 22.05.2019, it would be open to the respondent authorities to issue a fresh Show Cause notice by clearly setting out the violations found, and afford a reasonable opportunity to the petitioners to submit their explanation. On furnishing their explanation, the respondent authorities shall consider the

same and pass necessary orders, in accordance with law, by also taking into consideration the previous explanation dated 28.05.2019.

Accordingly, the writ petitions are disposed of. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

25th September, 2019

KSM



THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM



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