

(2008) 01 AP CK 0032
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1032 of 2008

R. Sreenivasulu

APPELLANT

Vs

The Revenue Divisional Officer

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Citation : (2008) 3 ALD 692

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V.H.V.R.R. Swamy, for the Appellant; Govt. Pleader for Civil Supplies for respondents 1 and 2, for the Respondent

Judgement

P.S. Narayana, J.—The learned Assistant Government Pleader for Civil Supplies had taken notice on behalf of the respondent on 24-01-2008 and requested time to get instructions. The matter is coming up for admission.

2. Sri V.H.V.R.R. Swamy, the learned Counsel representing the writ petitioner, would maintain that when the order of suspension and the first information report are to be compared, there is discrepancy relating to the father's name, and the identity of the party being doubtful, without putting the writ petitioner on notice, an order of suspension had been made and hence, the same is not sustainable. The learned Counsel also would submit that there is inordinate delay, the same being beyond the period of 90 days, in the light of the view expressed by this Court in D. Sambasiva Rao Vs. Joint Collector and Others, and Y. Chennappa Vs. Joint Collector and Addl. District Magistrate and Others, , the order of suspension to be set aside and the Writ Petition to be allowed.

3. On the contrary, on instructions, the learned Government Pleader for Civil Supplies would submit that the person, who was shown in the first information report and also the person-dealer, against whom, the order of suspension had been made, are one and the same, since the shop being one and the same. The learned Government Pleader also would submit that the suspension made may

be clarified as suspension pending enquiry and an opportunity may be given to the petitioner to submit his explanation in this regard and the same can be directed to be disposed of at an early date. The learned Government Pleader also would submit that the view expressed by the learned Judge relating to the maximum period of suspension to be only 90 days in *D.Sambasiva Rao v. Joint Collector, Guntur and Ors.* (1st cited supra) may not be correct in the light of the view expressed by a Division Bench of this Court in a judgment reported in *R. Sankar Naik Vs. R. Chowla Naik and Others*, .

4. Heard both the learned Counsel.

5. This Writ Petition is filed for a writ of Mandamus declaring the action of the respondent to suspend the petitioner as fair price shop dealer shop No. 1 of village of Kothakota Mandal, Mahabubnagar District, by proceedings No. F/1861/2007, dated 24-11-2007, of the first respondent, as null and void, and pass such other suitable orders.

6. Several facts had been narrated in the affidavit filed in support of the Writ Petition. It is, no doubt, true that there is some discrepancy relating to the father's name. It is needless to say that, predominantly, it is a question of fact. However, the principal question, which had been argued in elaboration by Sri V.H.V.R.R. Swamy, the learned Counsel representing the writ petitioner, is that the present order is in paramateria with the prior order and the learned single Judge of this Court in *D.Sambasiva Rao v. Joint Collector, Guntur and Ors.* (1st cited supra), followed the view expressed by a Division Bench of this Court in a judgment reported in *Joint Collector, Kurnool and Ors. v. A. Neelima* , and observed that the maximum period of suspension of authorization of a dealer can be 90 days only, and hence, in view of the same, the view expressed by the Division Bench in *R.Sankar Naik v. R.Chowla Naik and Ors.* (3rd cited supra) cannot be taken as a binding precedent in as much as the said decision is made on the strength of a particular given fact situation and the view expressed in *Joint Collector, Kurnool and Ors. v. A.Neelima* (4th cited supra) to be followed. The learned Counsel also placed strong reliance on *Y.Channappa v. Joint Collector and Additional District Magistrate, Anantapur and Ors.* (2nd cited supra) wherein this Court followed the view expressed by the learned single Judge in *D.Sambasiva Rao v. Joint Collector, Guntur and Ors.* (1st cited supra). On a careful analysis of the facts, it is, no doubt, true that the case in *Y.Channappa v. Joint Collector and Additional District Magistrate, Anantapur and Ors.* (2nd cited supra) had been disposed of in the light of the peculiar facts of the said case. However, in *D.Sambasiva Rao v. Joint Collector, Guntur and Ors.* (1st cited supra), it was observed at Para 4 as under:

Further a Division Bench of this Court in *The Joint Collector, Kurnool v. A. Neelima* held that the maximum period of suspension can be 90 days and consequentially if the proceedings are not concluded by the Revenue Divisional Officer, within that period, the suspension as to be revoked or set aside.

7. In substance, the view expressed by the learned Division Bench in Joint Collector, Kurnool and Ors. v. A. Neelima (4th cited supra), which had been followed by the learned single Judge in D. Sambasiva Rao v. Joint Collector, Guntur and Ors. (1st cited supra) appears to be that the maximum period of suspension specified is mandatory. It is, no doubt, true that the said decision of the Division Bench in Joint Collector, Kurnool and Ors. v. A. Neelima (4th cited supra) was under the prior order. But however, there appears to be no change when the prior order is compared with the present order. The learned Division Bench in R.Sankar Naik v. R.Chowla Naik and Ors. (3rd cited supra) observed at Para 5 as under:

The appellant had felt aggrieved by the order of the learned single Judge and filed this appeal by seeking leave, which was granted after hearing the parties. We also observe that the learned Single Judge failed to correctly follow the ratio of the decision in A.Neelima's case. In the said case, appeal before the Division Bench was against the order of the learned Single Judge, who had held that the suspension of fair price shop dealer would be for a maximum period of 90 days and if enquiry initiated consequent upon suspension is not concluded within that period, suspension shall stand automatically revoked. Appeal against such order was filed by the Joint Collector, Kurnool on the ground that there was no such time limit fixed in the rules. In the meanwhile, the appeal which had been carried by the fair price shop dealer before the Joint Collector against the order of suspension had been allowed holding both the charges framed against the dealer as not warranted and the fair price shop dealer was continuing as such, and therefore, expressing apprehension that the order of learned Single Judge might be misinterpreted for being applied as precedent, clarification was sought. The Division Bench, therefore, made it clear that observations of the learned single Judge made in that case were in the context of the case before him only and shall not apply as a general rule. However, the Division Bench agreed with the view of the learned Single Judge that the order of suspension cannot be used as a pretext for indefinite postponement of operation of fair-price shop dealership making it, in effect, as cancellation of dealership, and, an order of suspension like any other executive order has to be founded upon fair play and lack of arbitrariness and the continuation of the order of suspension indefinitely is arbitrary. The Division Bench, however, put a word of caution that what is a reasonable period of suspension will vary from case to case depending upon various factors, though, more often than not, period of 90 days, ordinarily may be sufficient to conclude the enquiry. Thus, the learned single Judge totally misunderstood the ratio of the decision of the Division Bench in A.Neelima's Case (1 supra) and proceeded to set aside the order of suspension. Learned Single Judge also lost sight of the decision of this Court in B.Maheswaramma v. M.R. Ramasubbamma that High Court should not issue any interim order permitting the petitioner to continue to function as a dealer. This decision of the Division Bench appears to be on sound principles of law that ordinarily there cannot be suspension of an order of suspension. Suspension can never be

treated as a punishment. Another Division bench of this Court in Writ Appeal No. 2003 of 2004 (P.V. Adenna v. Smt. B. Nagarathanamma and Ors. 1996 (1) APLJ 285) decided on 10-12-2004, had also set aside the order of learned Single Judge, by which order the learned Single Judge had set aside the order of suspension, or, had, in other words suspended the order of suspension pending enquiry.

8. Having observed so, the learned Division Bench made certain observations and ultimately allowed the writ appeal with certain directions as specified in Para 6. On a careful reading of the judgment in R.Sankar Naik v. R. Chowla Naik and Ors. (3rd cited supra), the Division Bench, having made certain observations relating to the decision of the prior Division Bench in Joint Collector, Kurnool and Ors. v. A. Neelima (4th cited supra), had disposed of the matter with certain directions, but, however, watering down the principle laid down by the prior Division Bench that the period of 90 days, which had been specified by the prior Division Bench, cannot be said to be either mandatory or it cannot be put in a straight jacket formula and each case has to be decided depending upon the facts of a given case.

9. The learned Government Pleader for Civil Supplies had brought it to the notice of the Court that in this particular case the period of 90 days had not lapsed. Further, it is also brought to the notice of the Court that this period of 90 days is neither specified under the prior order nor under the present order and when the control orders do not specify the period, the period cannot be fixed by the Court.

10. This Court is inclined to accept the submission made by the learned Government Pleader that when such period had not been specified by the control orders, it may have to be taken that the reasonable time may have to be decided by the Court depending upon the facts and circumstances of the particular given case.

11. In the light of the facts and circumstances, let the respondent treat the impugned order as suspension pending enquiry, put the petitioner on notice by issuing show cause notice forthwith, invite explanation and complete the enquiry within a period of six weeks after receipt of such explanation, if any, to be made by the writ petitioner.

12. The Writ Petition is, accordingly, disposed of. No order as to costs. It is needless to say that the petitioner is at liberty to raise objection relating to the identity of the person also.